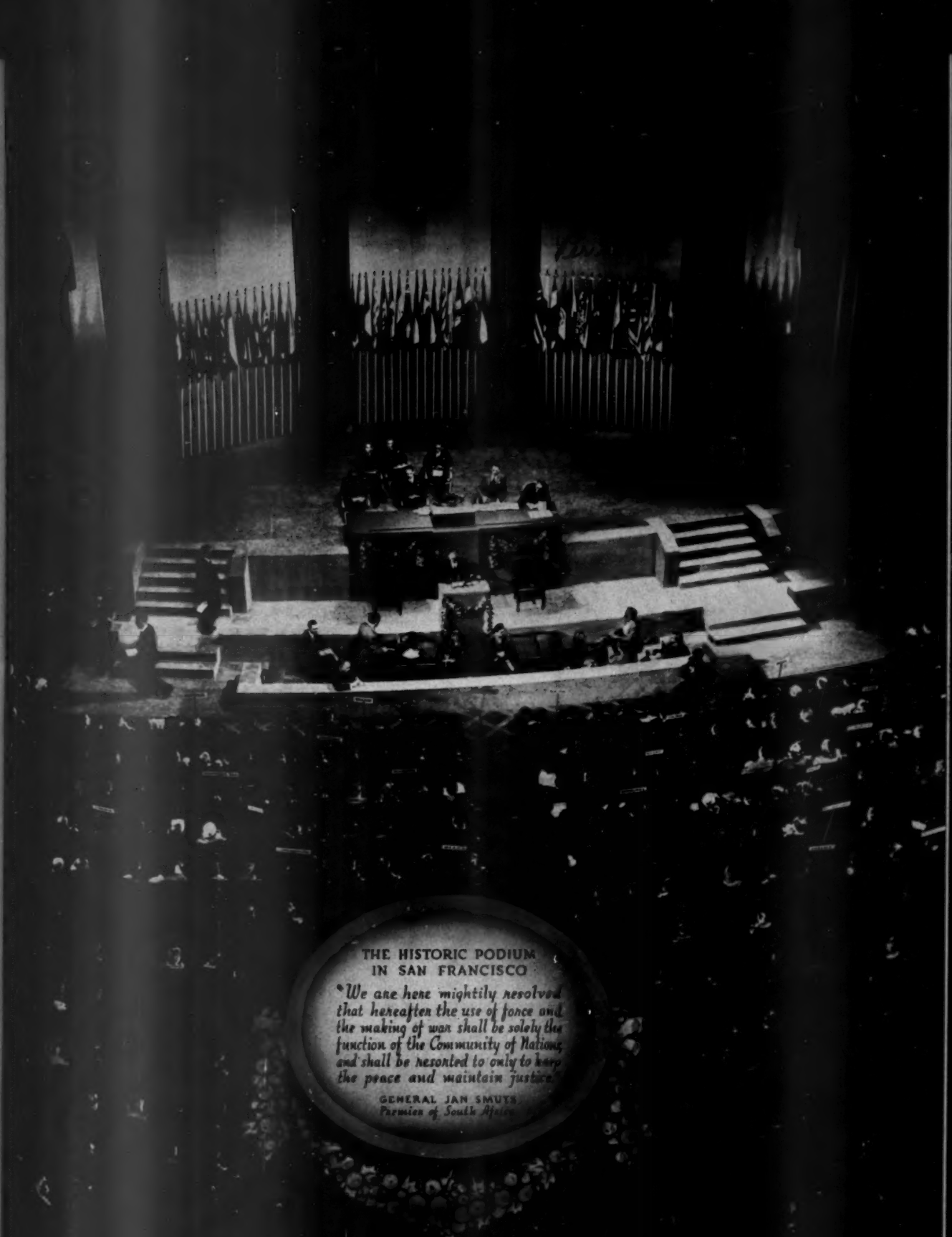

AMERICAN BAR ASSOCIATION JOVRNAL

July 1945

Contents

In THIS ISSUE

Our Cover

The beautiful and historic podium in the San Francisco Opera House—empty and silent now—is commemorated on our cover. No other rostrum of an official gathering in human history has resounded with the voices of so many lawyers from so many Nations—united in building walls against wars and foundations for justice and law. Picture by Moulin.

Coverage of the Conference

President Simmons tells our membership about the work and the results of the Conference. Chairman Tappan Gregory of the House of Delegates gives his personal impressions of what transpired in San Francisco. Judge Ransom of our Board of Editors sums up the controversial issues and summarizes the salient provisions of the Charter and the Statute of the Court.

Editorials

We ordinarily do not note them on this page, but this time the final action of the San Francisco Conference as to the World Court and the Statute of the Court is explained in an editorial. The significance of the Conference and the Charter is also commented on, in the light of the principles and recommendations urged by the American Bar Association.

Books For Lawyers

The reviews this month have unusual timeliness and cogency and an outstanding contribution to public thinking is Charles Prince's clear exposition of an authoritative Russian book on "Criminal Responsibility of the Hitlerites." He took his doctorate in international law and is Russian expert for the United States Chamber of Commerce.

Reviews of Supreme Court Decisions

Thirteen cases with many separate concurring and dissenting opinions occupying 201 pages of the official print are here presented in ten pages.

Among the cases are the following:

Williams v. *North Carolina* (the second of that title). That is the latest and most important pronouncement on the vulnerability of foreign divorces.

Screws v. *U. S.* The real crime here committed was "manslaughter, if not murder," but the brutal offenders were prosecuted in the federal courts for deprivation of civil rights under color of state authority.

There were other important cases involving criminal procedure, race discrimination, Sherman antitrust law, federal jurisdiction, telephone rates, patent law, and taxation.

The San Francisco Conference

by David A. Simmons

PRESIDENT OF THE AMERICAN BAR ASSOCIATION
CONSULTANT TO THE UNITED STATES DELEGATION AT THE UNITED NATIONS CONFERENCE IN SAN FRANCISCO

To a great many people the reports from San Francisco during the Conference have been very discouraging. The disagreements have been so many and some of them so fundamental that even reasonable headway toward a goal of peace and world security seemed impossible.

Let us bear in mind that the San Francisco Conference did not create any of these differences. They were already in existence and will continue until they are solved in one way or another. The fact that the American public was unaware of many of them means merely that we must make a more active effort toward understanding and then in attempting to help solve international problems which endanger the peace of the world.

The tendency of the press to play up every minor difference of opinion, or even of phraseology, between Russia and the United States as if it were a vital issue or, to use a different figure, as if it were a round in a fight to be won or lost, was not always helpful. Russia takes a firm position whenever she speaks and, perhaps, gives the impression that unless her position is accepted grave consequences may ensue. Witness her refusal to participate in the deliberations of the International Labor Office with Argentina a member. But when Argentina was admitted to the San Francisco Conference after a sharp fight, Russia shrugged her shoulders and went on to the next topic. So, too, was her reaction to the veto power. She desired a veto even over investigations of alleged aggression, but after some interchange of views between the heads of the governments, she smilingly gave way. Any lawyer who has tried and compromised cases for a couple of decades will recognize the tactics immediately and will not cry "Bad faith" every time there is a disagreement. A nation such as Russia, which has been forced to her utmost to keep from being destroyed and which has seen the minor nations about her used as allies or pawns by her bitter enemy, undoubtedly has a different opinion of her security needs and is less sensitive of the right of self-determination of her neighbors than is the United States, happily situated between Canada and Mexico. However, I see little reason for the press to make a Russian conflict out of everything that is said and done.

I had occasion to speak of the resolutions of the American Bar Association several times just before and during the Conference. Before one group of business men I was asked to explain our recommendation that in setting up the Assembly of the Organization consideration should be given to the principle of weighted representation of the nations.

This is a principle as old as the American Union. When the Union was formed several of the colonies insisted on equal voting in the Congress. In the final draft equality of voting was retained in the Senate, but voting in the House of Representatives was based on population, with the result that now Nevada has one vote, Texas twenty-one, and New York forty-five. Under the formula as adopted, weight was given to the factor of population.

I took the position that one day the Assembly would be the most important organ of the world Organization and should be constituted on a basis that would give recognition not merely to the sovereign equality of the states but also to other factors equally real, such as population, area, industrial production, value of exports, and perhaps other elements; this same formula might be used not only for voting in the Assembly but for apportioning the expense of the world Organization and also as a guide to the maximum military force any nation might be called upon to furnish in the common defense.

The next morning one newspaper had a three-column headline saying that I was supporting the Russian position.

On another occasion I presented to the United States Delegation the views of the American Bar Association on the subject of amendments to the Charter. As the Charter relates solely to international affairs and its provisions were adopted in San Francisco by a two-thirds vote, and as treaties have always been adopted in this country by a two-thirds vote of the Senate, our proposal was in line with the historical American practice. Specifically, our proposal was that amendments to the Charter other than those which might relate to the purely internal affairs of any member State should be authorized by a two-thirds vote of the Assembly when concurred in by a two-thirds vote of the Security Council and not less than three of the five members holding permanent seats in the Security Council. That recommendation was concurred in by an overwhelming majority of the consultants who took a position on the matter, including those representing the American Federation of Labor, the United States Chamber of Commerce, the Veterans of Foreign Wars, the American Farm Bureau Federation, the National League of Women Voters, the Federal

Council of Churches, the National Education Association, the General Federation of Women's Clubs, and others. The only outspoken opposition among the consultants came from the National Lawyers Guild.

The next morning a New York newspaper carried a three-column headline to the effect that the spokesman of the American Bar Association was attempting to pressure the American Delegation into forming an anti-Russian bloc. Nothing could have been farther from the truth, as I was merely discussing a fundamental American principle and never once mentioned Russia or her position on the matter.

Fortunately, the Russian correspondents took the product of the sensational press with a large grain of salt. One of them was reported as saying: "Can anything be concealed from the ubiquitous American press? The correspondents succeed fairly quickly in getting wind of what is being discussed at a closed conference, but to get wind of a subject does not mean truthfully reporting and explaining it. Every day, every hour the press, and particularly the local press, is full of assumptions, conjectures and open and concealed provocation."

I do not mean to imply that the press in general did not do an excellent job of reporting the Conference. I think they did; but with 2,700 correspondents purporting to give their views, it is not surprising that the American public did not in all instances get a clear and factual statement of what was going on. The Charter is a legal document and, as many of its provisions use phrases having a legal background, it is understandable that laymen might occasionally interpret them in terms of expediency. The lawyers of America, therefore, have an obligation to study the Charter and explain its principles to the people of America.

In view of the world-shaking events of the past few years which have conditioned the living and thinking of all our citizens, I believe we may safely assume their maturity and discuss frankly with them the realities of the world in which we must live. The Organization which has been shaped and molded in San Francisco, in my opinion, is bound to have the profoundest effect, for good or ill, upon the lives of each and every one of us, and upon the life of our country.

The Blueprint Was Dumbarton Oaks

In seeking to evaluate the San Francisco Charter let us bear in mind the objectives of the Conference and then see what was done to accomplish them. The Conference was called to bring into being not some theoretical world organization but the organization suggested by the Big Four Powers in the Dumbarton Oaks Proposals. The dominant note of the Proposals was security, and the force envisioned was to be directed against our present enemies and against any lesser power that might turn aggressor and endanger the peace of the world. There was a bow in the direction of a world court, but there was no mention of justice or international law as a standard of conduct for the nations, great or small. Neither was there any word in the Proposals relating to dependent peoples, colonies or mandated areas, although fully one-third of the people of the world fall in one or another of those categories.

With this understanding of the blueprint which the Delegates had before them when the San Francisco Conference convened, we can consider the additions and changes

THE WHITE HOUSE
WASHINGTON

May 11, 1945

My dear Mr. Murdock:

Thank you for sending me on behalf of the President of the American Bar Association, a copy of the Recommendations of the Association as to the Dumbarton Oaks Proposals for the Establishment of a General International Organization for Peace, Justice, and Law.

I appreciate the interest shown by the American Bar Association in the establishment of an international organization for peace and security and the educational work it has done by holding meetings throughout the country to discuss the Dumbarton Oaks Proposals.

I understand that the President of the Association is one of the consultants to the American Delegation at the United Nations Conference on International Organization, and I assume, therefore, that he will bring the Recommendations of the Association to the attention of the American delegates.

Very sincerely yours,

Harry S. Truman

Mr. James Oliver Murdock,
American Bar Association,
1140 North Dearborn Street,
Chicago 10, Illinois.

agreed upon and then see what the Charter, as amended, does and does not purport to do.

First, however, lest anyone assume that mere attendance at the Conference qualifies one as an expert, let me confess the limited role I occupied as a Consultant.

The Role of a Consultant

The principal function of the consultants was to testify to group sentiment in the United States and thus enable the Delegation to discover the highest common denominator acceptable to the American people. The Charter of necessity must be a common denominator of opinion within the United States and, at the same time, a common denominator of the views of the forty-nine nations participating in its drafting. The subjects with which it deals must, accordingly, be few in number and fundamental in character. Advanced thinkers who want a federation of mankind and a parliament of the world will have to wait at least until something simpler has been tried and found wanting.

The United States Delegation consisted of seven delegates, a number of official advisers, and forty-two consultants selected from national organizations representing business, labor, agricultural, legal, racial, religious and educational groups in our country. The conduct of our delegation was above reproach. In their dealings with the visiting delegations they exercised the greatest courtesy and restraint in pressing their views on others, a restraint expected of a host and worthy of the great nation they represented. In their dealings with their own advisers and consultants they displayed the greatest consideration. We were called in for consultation at every stage of drafting the Charter.

In the June issue of *Atlantic Monthly* there is a passing reference to a complaint by one of the consultants that the United States Delegation ignored the consultants and never spoke to them the first two weeks of the Conference. This is another instance of the confusion reported to the American people. My notes show that in the first two weeks the consultants met with members of the United States Delegation seven times and both questioned and advised.

I am glad to report that the consultants exercised restraint and usually each made suggestions on policy and drafting only in his own limited field. For instance, being appointed to present the views of the American Bar Association and legal groups affiliated with that association, I limited my participation in discussion to matters affecting the World Court, the principle of justice, the rule of international law, and the amendment provision.

Our view that justice and international law should be major objectives of the organization coincided with similar views of many visting delegations, particularly those of Latin America, and found ready acceptance with out own delegation. The question of whether the old World Court should be retained or a new one with equal powers and functions be created, was resolved in favor of a new court due to the difficulties attendant upon membership in the present court statute of seventeen nations, including some enemy states, who are not presently members of the United Nations.

Now, briefly, let us see what the Charter does and does not do.

What the Charter Does Not Do

It does not set up a new government with sovereign powers.

(Continued on page 378)

THE SECRETARY OF STATE
WASHINGTON

Fairmont Hotel
San Francisco

May 30, 1945

Dear Mr. Simmons:

I am delighted that you were able to be present in San Francisco as a consultant to the United States Delegation. The meetings with you and the other consultants have been a source of great satisfaction to me personally and have substantially aided the work of the Delegation.

I want you to know how much I appreciate the contribution which you have made toward the end which we all so earnestly seek--the establishment of an international organization to maintain peace and security.

With best wishes,

Sincerely yours,

E. R. Stettinius, Jr.

Mr. David A. Simmons,
President of American Bar Association,
Commerce Building,
Houston 2, Texas.

Conference Discursion

by Tappan Gregory
CHAIRMAN, HOUSE OF DELEGATES

Debate touched lightly on the question of why this great portal city of our Pacific coast, San Francisco, was selected as the site for the United Nations Conference on International Organization.

Most of our visitors may see much of our country en route; it is a beautiful city of fascinating, though brief, life history; its accommodations are extensive and comfortable; its climate is as nearly perfect as climate may be; it faces out across the Pacific and looks boldly and squarely at our enemy as though to challenge interference; its people are friendly, hospitable and generous. Reasons enough, not to be denied.

The Opera House was packed with people and the occasion with drama when Mr. Stettinius walked to the rostrum to open the first session on April 25. There was no invocation, only a moment of silent meditation at the request of the chairman. As one of the devout remarked, it seemed as though everyone had been invited except God.

There was no virtue in promptness. It was prerequisite. Radio schedules are inelastic and the President spoke strictly on schedule.

A word of our secretary, temporary chairman, head of the United States Delegation. His charm of manner, his unfailing courtesy, his limitless patience and his forthright courage won him an admiring following.

By all this, by the exercise of all these talents, he held the Conference together and encouraged understanding cooperation. His selection was a splendid choice for a difficult undertaking.

There was no individual permanent chairman. This office was held in rotation at the early Plenary Sessions of the Conference by Stettinius, Soong, Molotov and Eden. Some debate preceded this arrangement.

The first week was largely occupied with speeches by representatives of the forty-six nations originally in attendance.

Mr. Eden thought four weeks should be enough time for the work of the Conference!

Ambassador Cáceres of Honduras reminded his hearers that Honduras did not wait until the glow of victory showed upon the horizon before declaring war upon the Axis powers.

General Romulo, of the Philippines, pleased everybody with his eloquent remarks in English.

All spoke earnestly and effectively.

Arguments ensued as to the admission of White Russia, the Ukraine and Argentina. The vote was favorable in each case. Weeks later Denmark joined, to bring the total number of states to fifty.

Of these, the four hosts were the U.S.A., the United Kingdom, the U.S.S.R. and China. It was at their invitation that all came together at San Francisco.

Here is a brief, sketchy outline of the organization of the Conference. It does not purport to fill in all the blanks. Too much detail here would be tiresome.

1. The Plenary Session, consisting of all members of all delegations.

2. Subsidiary to the Plenary Session, a Steering Committee composed of the chairmen of all delegations. Its function is to facilitate the operations of the Conference.

3. Two sub-committees of the Steering Committee. One of these is the Executive Committee with one member each from fourteen states including the so-called Big Five—U.S.A., United Kingdom, U.S.S.R., China and France. This Committee deals with questions of procedure. The other sub-committee is the Coordination Committee, made up of designees of the members of the Executive Committee. It is really little more than a conduit between Commissions and the Advisory Committee of Jurists of six members. The latter are the expert draftsmen in the five official languages of the Conference—English, French, Spanish, Russian and Chinese.

4. The Credentials Committee of six members.

5. Commission I—General Provisions—having two technical committees to consider Dumbarton Oaks Proposals and all suggested amendments upon the subjects assigned to this Commission.

Commission II—General Assembly—having four technical committees.

Commission III—The Security Council—having four technical Committees.

Commission IV—Judicial Organization—having two technical committees.

Each of these Commissions is made up of delegates from all the participating states.

The duties of all the technical committees are to study as suggested under Commission I and then to present comprehensive recommendations to their respective Commissions. There were about 700 pages of amendments suggested.

Upon approval by Commissions these recommendations skip lightly

through Steering and Coordination Committees and lodge with the Advisory Committee of Jurists for drafting.

Drafts are checked back and forth until finally approved in five languages by all appropriate Commissions and Committees when they are ready for presentation to the Plenary Session to be adopted as part of the Charter.

The name recommended for the Organization is the United Nations.

The Charter will have but one original. It will be in the five official languages and the Chinese will read across the page.

On April 28, in the midst of a Plenary Session, Ambassador Cáceres figured again. The interpreter was translating into English from Spanish the speech of Senor Serrato of Uruguay. Suddenly, there was a commotion in front of the rostrum. Senor Cáceres was exhibiting first to Mr. Molotov in the chair, then to the news reel makers in the balcony and finally to the house in general a pink extra with six-inch scareheads, "Nazis Quit." A phalanx of news photographers flashed again and again. Mr. Molotov was imperturbable. Applause and cheers and much excitement. At length order was restored and the translation proceeded.

Word passed through the audience that as soon as the interpreter had finished, the chairman would undoubtedly make the official announcement.

Someone mounted the platform and whispered to the chairman. That was assuredly the final word.

The speech over, Mr. Molotov stepped forward and spoke in measured tones in Russian. Photographers recorded him while he spoke the momentous words. Then a hush fell over the house as his interpreter repeated in English: "This session is now adjourned. The next Plenary Session will be held in this same place at 3:30 P.M., Monday, April 30."

After about eight Plenary Sessions, the Technical Committees buckled on their harness and went to work. Their sessions were not open to the public—and that excused the Consultants and Associate Consultants.

President Simmons was Consultant for the American Bar Association to the United States Delegation and appointed as Associate Consultants Mitchell B. Carroll, Chairman of the Section of International and Comparative Law and Judge William L. Ransom, Chairman of the Association's Committee to Report as to Proposals for the Organization of the Nations for Peace and Law. When Judge Ransom concluded that he could be more effective as adviser to Manley O. Hudson, Judge of the Permanent Court of International Justice, and resigned as Associate Consultant, the writer was designated to take his place and struggled desperately to sustain the burden alone as Consultant during a bleak two weeks after both Mr. Simmons and Mr. Carroll had been compelled to leave the Conference because of the pressure of professional engagements elsewhere.

An Associate Consultant is perhaps the lowest ranking participant in the Conference with official status. He listens to words of wisdom and dutifully attends meetings and responds gratefully to the efforts of others to keep him occupied and out of mischief.

Forty-two national and international organizations in the United States were authorized by the State Department to appoint each one Consultant and two Associate Consultants. Many others sent representatives to the Conference without any credentials. There were probably two or three hundred of them.

The authorization for the designation of Consultants and Associate Consultants was a new and important step in public relations—an experiment in the democratization of diplomatic relations and foreign policy. It succeeded beyond the expectations of its sponsors or participants.

Nowhere in the Dumbarton Oaks Proposals is there any suggestion that the affairs of the world should be administered through the new organization according to justice under the law. Yet that is clearly set forth now in the tentative Charter as a controlling principle.

Nowhere was education mentioned, and little or no thought was apparently given in advance of the Conference to the subject of the dignity of man, human rights and liberty for the individual. These omissions have now been corrected. The status of the proposed Economic and Social Council has been clarified and dignified, albeit with language to protect against unjustifiable interference by this great international organization with the purely domestic affairs of any state—a point on which the American Bar Association sounded a note of warning in its published recommendations.

Suggestion was made that the Consultants and Associates might organize for more effective action but this was determined unwise. Certain measures were, however, urged upon the United States Delegation in memoranda signed by a number of organizations by their Consultants.

The Consultants held meetings of their own several times each week to advise together upon their problems and to plan courses of action. They met on call once or oftener each week with members of the United States Delegation or of the State Department for the purpose of hearing lectures upon subjects of importance to the Conference and joining in discussions upon these subjects and to be told in confidence of progress made by the delegations and the Technical Committees.

Occasionally these confidential matters had already appeared in the press!

Several times Consultants concerned with particular subjects were requested to convene with members of our delegation to present their views. Others were always told they were welcome if they desired to come and they generally did, in droves!

At the Public Health Building in the Civic Center, meetings were held to listen to addresses by dignitaries and all representatives of all organizations, with or without credentials

(Continued on page 380)

Let's Look at The Charter of the United Nations

by William L. Ransom

CHAIRMAN OF THE ASSOCIATION'S COMMITTEE ON PROPOSALS FOR THE ORGANIZATION OF THE NATIONS FOR PEACE, JUSTICE AND LAW

June 20, 1945

This "progress report" for the information of the readers of the JOURNAL is written as the San Francisco Conference of the United Nations comes near to its final plenary session, with reasonable assurance that remaining difficulties will be ironed out and that there will be agreement on a Charter of the United Nations and on a Statute of a Court of International Justice, which will be submitted to the members of the United Nations for acceptance or rejection according to their constitutional processes.

This is not a report by the Association's Committee, nor is this written in my San Francisco capacity of adviser to the representative of the Permanent Court of International Justice. The report and recommendations of the Committee to the Board of Governors and the House of Delegates will be decided on and made by the Committee, in the light of its correspondence and discussions and the views expressed by members of the Association as to its advisable action. This is written only as a personal summary or review, as a member of the Board of Editors, of various of the controversial issues in the Conference and their outcome as matters stand at this stage of closing. These may well be read in the light of what has been reported in the May and June issues of the JOURNAL.

Final texts of most of the Charter are not yet available at this writing, and finality cannot yet be ascribed to the present state of the drafts on controversial issues. Almost anything can still happen on some of the points for the sake of unity and agreement among at least the five principal Nations; and I am not certain that all of the matters herein reported on can be checked and confirmed with the adopted texts, before the "forms" have to be closed on this issue.

Over-all impressions of the Conference and its outcome, and of the participation and contributions of the American Bar Association as an accredited organization, are given by officers of the Association in this issue and were chronicled also in our May issue. The best exposition of the basic problems confronting the Conference and the American delegation, and of the American attitude toward them, was the forthright statement by the vice-chairman of the delegation, Senator Tom Connally, of Texas, at a dinner given under Association auspices. This is published elsewhere in this issue, and should be read by those who wish to understand the spirit which animated the Conference.

Agreement and the Need for Unity

The outstanding and encouraging fact about the Conference is that, despite obstacles and "crises" which continued to develop almost to its closing hours, it has come to the point where agreement seems virtually assured. Unless some new "monkey-wrench" is thrown into the machinery now carefully geared for high-speed completion, the Conference will approve and submit a Charter which, if ratified, will be the beginnings of international organization for peace, justice and law. A highly satisfactory Statute of the Court of International Justice will be attached to the Charter.

Whatever may be deemed to be the deficiencies and defects of the Charter in some respects, the structure and safeguards hammered out and put to paper, word by word, by men who never accepted apparent impossibilities of agreement, *can* be made to work for a long time to come, if the Nations retain the spirit of unity and good will which was manifest throughout in San Francisco, in the face of many disturbing and discouraging events which meanwhile transpired elsewhere in the world and made it clear that the new organization is sorely needed and is being formed none too soon.

Another significant development in San Francisco was the apparently general realization that the test of the efficacy of the United Nations Charter will be the promptness, vigor and adequacy of the actions decided on and unitedly taken under it, whenever and wherever the first instance of aggression or breach of the peace arises. If there are faltering or half-way measures in that crucial instance, the hopes of men will fail and fall, so far as the present organization is concerned. Subject only to whatever doubts may be left by the insistence on unity and unanimity of action in such a crisis, the new and specific enforcement pro-

visions are a "definite" improvement over both the League of Nations Covenant and the Dumbarton Oaks Proposals. *This organization was formed to act;* the resolute spirit animating its deliberations ran far ahead of some of the limitations acceded to for the sake of unity, with the hope and belief that they will never be invoked.

As was said on June 11 in the report of the committee headed by Joseph Paul-Boncour, of France,

> Military assistance, in case of aggression . . . ceases to be a "recommendation" made to member states; it becomes for us an "obligation" which none can shirk.
>
> If these proposals are adopted, the international organization will cease to be unarmed in the face of violence; a collective force the size, the degree of preparedness, the composition and the general location of which will be determined beforehand, will have been placed at the disposal of the Council to carry out these decisions.

The Need for Understanding Each Other

Even more fundamental and far-reaching than any of these vital aspects of the Conference was its continuing demonstration, day by day, of the *desperate* need that the nations and peoples of the world shall come to a better, closer *understanding* of each other—the differences in backgrounds, language, color, religions, creeds, economic development, necessities, ideologies, habits of mind, and also the things which they have in common, in their hopes and aspirations for peace and justice and security, for the dignity and well-being of the individual man and woman irrespective of his origins, and for the chance to be themselves and to work out their own lives in their own way under ordered liberty. "Tolerance" of each other's point of view is not what is needed; understanding, respect, and willingness to join with them and work with them in common causes, are essential for the peace of the world. Aloofness and suspicion cannot persist if the new Charter is to be durable and effective. New, unaccustomed units and concepts of loyalty, *in addition* to our sturdy nationalisms, traditions, and prides, have to be builded in an international sense, if an international conscience and sense of justice are to have lasting foundations.

G. Myrddin Evans of England put it well when he said, on June 11: "The only thing that will finally prevent war is a change in the minds and hearts of men: that and that alone will preserve us from the ultimate destruction of civilization which the continuation of war involves."

Americans Should Try to Understand, Not Suspect or Distrust

Many of us leave San Francisco with a dominant feeling that Americans *must at all hazards come to understand* their neighbors and their associates in the United Nations. Perhaps first and most of all is the need for knowledge and understanding of vast Russia—an understanding based on sympathy, respect, dependable information, not on prejudices, disagreement on ideologies, misrepresentations or half-truths. There is need for like understanding of all of our neighbors in the Americas, all of our blood-brothers in the British Commonwealth of Nations, of stricken France and war-torn China, and all of the small nations everywhere who look so anxiously to the Court of Justice and to the new organization for security against armed force and economic ruthlessness which leave their peoples prostrate.

It was at times almost *pathetic*, in San Francisco, to see this groping for a better understanding and appreciation; and it is a deserved tribute to the course followed by the American delegation to say that on most of the controversial issues in the Conference, the Americas were virtually united in support of the position of the United States, as were generally the smaller Nations of the world. On only a few major issues on which the United States felt that it had to stand with its colleagues in the "Big Five" was there a division between the United States and the many countries which look to it for understanding and leadership.

American lawyers and their organizations can, in my opinion, render no greater service to their country at this time than to assist and promote, in their home communities, in every way they can, an enlightened appreciation and understanding of the diverse peoples of the earth, and an internationally-minded conscience and sense of loyalty to the institutions and procedures for the peaceful settlement of disputes and the removal of incipient causes of distrust, desperation, and conflict.

With these observations I shall summarize the prospect as I believe it to be, in the closing hours of the Conference, on various of the controverted issues which may be of particular interest and concern to American lawyers. I shall not be able to deal with all of the undetermined issues, and do not take them up in any order of their relative importance.

1. Preamble of the Charter

Significant of the differences, even uncertainties, of viewpoint and approach, and also of the constant striving for agreement on a fair consensus, has been the protracted consideration required for the drafting even of an acceptable Preamble of the Charter.

The committee in charge has formulated and submitted the following, for which the basis was a draft made by the beloved General Jan Smuts, Premier of South Africa:

> The peoples of the United Nations—
>
> Determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
>
> To reaffirm faith in fundamental human rights, in the dignity and value of the human person, in the equal rights of men and women and of nations large and small, and
>
> To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

To promote social progress and better standards of life in larger freedom, and for these ends

To practice tolerance and live together in peace with one another as good neighbors, and

To unite our strength to maintain international peace and security, and

To accept principles and to institute methods to insure that armed force shall not be used, save in the common interest, and

To employ international machinery for the promotion of economic and social advancement of all peoples

Through our representatives assembled at San Francisco agree to this Charter.

Much of the above is still controverted, and may be considerably rewritten. The disagreements start with the first line, which appear to undertake to make the contracting parties "the peoples of the United Nations" rather than the Nations or their Governments. Many prefer to start by saying: "The High Contracting Parties", etc.

As in the Dumbarton Oaks Proposals, there has been a lack of certainty as to what should go in the Preamble and what in the interpretative Statement of Purposes, both of which will have vital bearing on the international law of the future. Commission I reported, as the first "Purpose" of the new organization:

> To maintain international peace and security; and to that end to take effective collective measures for the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means and in conformity with the principles of justice and international law adjustment or settlement of international disputes or situations which may lead to a breach of the peace.

The smaller nations generally, and a majority (but less than the required two-thirds) of the committee which prepared the draft, wanted to move up the phrase, "in conformity with the principles of justice and international law" so that it would follow the words "peace and security". Britain and the United States opposed this, on the ground that they did not want the maintenance of peace and security "tied in with legal procedures." Commander Stassen stressed that the "policeman" must be able to say "stop fighting", not merely "stop fighting unless you feel that international law is on your side." The above-quoted version seems likely to stand.

It will be noted that the proposed Preamble and Statement of Purposes, as do other parts of the Charter, give a measure of recognition to the principle recommended by the American Bar Association (31 A.B.A.J. 227, 230, 231) that justice and international law should be stressed in the Preamble and throughout the Charter.

Unless there is a last-minute change, the new organization will be officially known as "The United Nations."

2. The International Court of Justice

What has befallen the present World Court and the existing Statute of the Court is shown in the two summaries which are published in connection with this report. The outcome is also commented on in an editorial in this issue.

The continuity of the Court as an institution has in a sense been broken. The practical and political problems which led to the decisions for a successor Court and a new Statute were substantial. Ways and means of overcoming them were offered, but apparently they were not deemed acceptable.

On matters as to the Court, the attitude of the majority in the American delegation and its advisers, in their quest for unity, was probably the decisive factor, as it was also on broadening compulsory jurisdiction. Senator Arthur Vandenberg, however, although not a lawyer, gave staunch support to the American Bar Association's recommendation that the Court of the new organization should be adapted from the existing Court. Senator Tom Connally brought up the matter several times in the American delegation, but could obtain no change of attitude. Governor Harold E. Stassen served on Commission IV and Committee No. 2, which had Court matters in charge, and concluded that there needed to be a new Court. The decision should not be criticized without understanding what was stated to be the reasons for it.

In any event, there will be a new International Court of Justice as one of the principal organs of the United Nations. In other respects the new Statute will take no backward step. It follows closely the existing Statute, with some improvements. The joint recommendations of the Canadian and American Bar Associations (31 A.B.A.J. 223-225, 235) were nearly all adopted. The vital principle of an impartial, independent Court for the peaceful settlement of disputes according to law was not sacrificed or impaired. The efforts to broaden jurisdiction are not likely to be put aside.

After reading carefully the splendid report by Commission IV, as well as the text of the new Statute, my personal opinion is strongly that in the *final* outcome the great cause of international adjudication has gained, not lost, in San Francisco, and will be furthered by the ratification of the Charter and the annexed Statute. It would be difficult for the lawyers of America and the world to over-estimate their debt to Judge Manley O. Hudson of the present Court. Despite the discouragements and disappointments at first encountered, he and his associates stayed on the job in San Francisco and worked unceasingly for the best possible results. His great knowledge of all ramifications of the subject, and his skills as to text, were continuously at the disposal of Commission IV and its committees, which publicly acknowledge the usefulness of what he had done. The satisfactory character of the final outcome fully justifies his faith and his long vigil.

3. Amendment of the Statute of the Court

As reported by Committee No. 2 and adopted by Commission IV on June 12, the Statute of the new Inter-

national Court of Justice identifies the procedure for its amendment with the provisions of the Charter as to amendment of the latter.

As the Statute contemplates that Nations may be made parties to the Statute without their admission as members of the United Nations, the Statute as adopted by Commission IV provides that parties who are not United Nations may, if the Security Council and the Assembly approve, participate in the amendment of the Statute.

The provisions of the Charter itself as to the Court and Statute cannot be amended over the objection of any one of the five principal Nations. An important issue not yet expressly decided, so far as can be learned, is as to whether or not this potential "veto power" of a single member of the "Big Five" applies also to the amendments of the Statute. Some countries which oppose extensions of the obligatory jurisdiction of the Court favor an extension which would enable them to block, if they saw fit, any approach to universality of such jurisdiction, which is so strongly favored by a substantial majority of the fifty United Nations.

Here again it would be unwarranted to assume that such a right to forbid an amendment, if conferred, would necessarily be exercised by any of the "Big Five", if the consensus among the United Nations, including the principal powers, favored such a change in the light of experience. Whatever "veto power" is vested in this respect would indubitably tend to operate as a potential safeguard of the security and independence of the Court, although it might delay or frustrate needed enlargements of its jurisdiction.

4. Amendments of the Charter

Around the limitations on the power of the United Nations to re-examine and revise or amend their own Charter as now adopted has raged one of the most spirited and fundamental controversies of the whole Conference. The final outcome seems less than certain until adjournment is taken.

On one side have been those who insist that the essence of democratic organization requires that its structure, scope and safeguards shall be amendable when its members preponderantly favor a change. With them are aligned those who, like the American Bar Association (31 A.B.A.J. 228, 231-2) have accepted the fact that the present Charter would stop short of what they believe to be required for its adequacy, and so have urged that present provision be made for a Constitutional Convention to re-examine, and if need be revise, the whole document at a date not distant. With these groups also have been counted those ambitious persons who have been willing to accept whatever provisions they could get in the present Charter, so long as they could be left free to amend it later to incorporate more fully their drastic ideas of a different "world order."

The crux of the situation, largely giving rise to the issues as to "veto power", has been the insistence on retention of equality of voting power. Of the fifty United Nations, five are recognized as taking the principal responsibility for enforcing peace and only three are actually in a position to furnish sufficient armed forces to prevent or punish acts of aggression. The "Big Five" have been unwilling to give to a majority or two-thirds of the fifty Nations a "blank check" to amend the Charter as they see fit through a Constitutional Convention or otherwise. Amendments effected by a numerical preponderance might radically change the Charter, impose economic or social ideologies, or transform the organization into such a world government as some of the principal Nations would never have joined, had it been in that form in first instance. In that connection, present texts indicate that there will be no provision for withdrawal from the United Nations by a country which once joins it.

The idea of providing for a Constitutional Convention to re-examine and revise the Charter has generally been accepted, but not in any such specific form as the American Bar Association urged (31 A.B.A.J. 228, 231-232). At the insistence of smaller powers, the sub-committee in charge reported a provision for the calling of such a convention within five to ten years. This was not acceptable. The "Big Five" united in opposing any such limitation as to time, and also in their insisting on an individual "veto power" on the taking effect of any amendments of the Charter, from whatever source they come.

As matters stand at this writing (June 20), there has been accepted an American compromise to the effect that if a revisionary convention has not meanwhile been called and held, the matter of calling such a convention shall be placed on the calendar of the Assembly and the Security Council in the tenth year, when it can be called by a majority vote in the Assembly and any seven votes in the Council. Amendments approved by a two-thirds vote in the convention would become effective on ratification by two-thirds of the members of the United Nations, including all of the five nations having permanent seats in the Security Council. The "Big Five" seem unlikely to give way on the "veto" issue, which could be obviated, if at all, only by acceptance of "weighted representation" (31 A.B.A.J. 228, 232) which would be the last thing most of the smaller States would want.

5. The Security Council

The original set-up for the Security Council, in the Dumbarton Oaks Proposals, has been stoutly adhered to. Aside from the five "permanent" members from the "Big Five", there will be six "rotating" members from the other Nations. Probably there will be some acceptance of the principle, urged by Prime Minister Mackenzie King of Canada, that when one or more of the Nations not represented in the Council is called on to place armed forces at the disposal of the Council, a representative of one such Power shall have a seat and vote in the Council on that question.

The responsibility and the powers of the Council for acting summarily to enforce peace have been strengthened and given "teeth", unless the "veto power" breaks them down. There will be no division of the responsibility for action.

6. The General Assembly

Contrary to the previously-expressed fears that practically no powers would or could be vested in the General Assembly because of what was deemed to be the utter impracticality of disturbing equality of the voting power for small states and large, an examination of the whole Charter will disclose that important powers have been given to the Assembly, at many points.

The most controversial of these is still the "Vandenberg Amendment", if it survives last-minute revisions. Under it the Assembly could take up, discuss, and make recommendations as to, any matter which it looks on as threatening the peace of the world, etc., provided the Security Council has not decided itself to take up the matter. Accordingly, if exercise of the "veto power" blocks Security Council investigation and action, the Assembly could evidently take up the matter and make known its considered views. The American and Russian interpretations of this amendment appear to differ widely. The proposal that the Assembly shall have power to recommend the revision of treaties (31 A.B.A.J. 233) was once accepted by the Committee in charge, but now seems to have been "lost in the shuffle" or scuffle.

What is hoped will prove to be the last "roadblock" on the way to adjournment was precipitated by a demand by the Soviet Union on June 17 for a return to the text of the Dumbarton Oaks Proposals as to what the Assembly may discuss. The principal issue was as to whether the Assembly should have the right to "discuss any questions relating to the maintenance of international peace and security," as the Dumbarton Oaks Proposals said, or the right to "discuss any matter within the sphere of international relations,"

The existing Permanent Court of International Justice

The present judges hold office "until their successors are elected," under the terms of the present Statute—an international instrument to which 48 states are parties; 16 of them not United Nations.

Present judges will continue to constitute the Court so long as these states keep in force that instrument; no new judges will be nominated or elected to present Court.

Presumably the 48 states, or a greater number of states (maybe in an Assembly of the League of Nations now in contemplation) will at some time before the ratification of the Charter and new Statute, undertake to declare the present Statute to be no longer in force or declare a cesser of the office of judges of the present Court.

Judges of the present Court have no preferred status in the nominations or elections to the new Court — those eligible may be considered for election.

The Court has a budget which has been alimented for 1945; no steps have been taken for 1946.

The extent to which the present Court can function for the time being, in view of the United Nations organization and the San Francisco decisions against continuance of the Court, is problematical; four of the present judges (from Spain, Italy, Roumania, and Finland) are not from United Nations.

There will evidently be a hiatus, perhaps of a year or more, between the termination of the present Court and the time when judges of the new Court can be nominated, elected and begin to function.

The decision as to the present Court was made for political considerations which were deemed advisable in the interests of acceptance of the Charter, and were not based on disapproval or criticism of the present Court and judges, or of their work, which was generally commended most highly, in the reports and arguments in favor of what will be technically a "new Court."

The failure to preserve factual continuity may be regrettable but is not seriously retrogressive, in view of the excellence of the Statute; the way is open to building further progress in international law and adjudication on the work of the great Court which has pioneered so well since 1920. The unity of opinion manifested by Canadian and American lawyers has been influential, and should continue to be militant.

as the pending draft of the Charter read.

Dr. Evatt, of Australia, doughty spokesman for the small Nations, was willing, on June 19, to accept a compromise of the original position of the Soviet Union, so as to authorize the Assembly to discuss "any matter within the scope or sphere of the Charter." The Russian offer was to authorize discussion of "the powers and functions of the organs of the Charter." The area of difference did not seem large, and an acceptable compromise of this issue, admirably presented by A. A. Gromyko, head of the Soviet delegation, seemed likely.

7. The Economic and Social Council

The Conference is raising this Council to the rank of being one of the "principal organs" of the United Nations, thus coordinate with the Security Council, the Court, and the Secretariat. The promotion of a lot of far-reaching changes may be sought in many countries under the authority of its generalizations; e.g., "higher standards of living," "full employment," "international cultural and educational cooperation and the solution of health problems," international collaboration, under the initiative of the Council, in the fields of trade, finance, communications, transport, reconstruction, etc. Various vaguely defined commissions and agencies are to be set up, including a Commission on Human Rights "without distinction as to religion,

The successor International Court of Justice

will come into being when the United Nations Charter and the Statute of the Court have been ratified and judges have been nominated and elected.

The Statute will follow closely the Statute of the present Court, with considerable improvements; practically all of the recommendations of the Canadian and American Bar Associations are carried in, except as to continuity and jurisdiction.

All members of the United Nations Organization will automatically be parties to the new Statute; this may bring in Russia, the United States, etc.

States not members of the United Nations may be admitted later as parties to the new Statute on conditions not yet prescribed. The new Court will start with at least 50 parties to its Statute; the present Statute has 48 parties.

Judges will be nominated in the same manner as judges of the present Court, with bi-cameral election by the assembly and the Security Council.

The seat of the Court will remain at The Hague, but the Court may sit *en banc* elsewhere.

The rule-making power of the Court is strengthened; the Court is empowered to create special Chambers and, with the consent of the parties, *ad hoc* Courts for particular cases or purposes.

The jurisdiction of the Court remains substantially as in Article 36 of the present Statute; the "optional" conferring of obligatory jurisdiction is retained, despite the opinion of a large majority of States for broadening jurisdiction.

The Statute goes to the limits of language to retain for the successor Court all of the jurisdiction conferred on the existing Court by treaties, multipartite agreements, and declarations.

The powers and functions of the Court in rendering advisory opinions on legal questions are retained. Advisory opinions may be requested by the Assembly or the Security Council, or to a limited extent by such bodies or agencies as the Assembly authorizes.

The provisions of the Dumbarton Oaks Proposals as to the Court are substantially improved and clarified in the Charter. Charter provisions as to the Court cannot be amended so as to abolish or impair it over the objection of any one of the "Big Five." The amendment provisions of the Statute are identified with those for amending the Charter; *quaere*, does this extend the "veto power" to amendments of the Statute?

Unlike the detachment of the existing Court from the Covenant and League of Nations, the new Court will become an integral part, and the principal judicial organ, of the United Nations organization.

The final Report of Commission IV as to Judicial Organization is a magnificent and historic document—a landmark in the long struggle for international law and adjudication. It was adopted unanimously.

language, race or sex. The existing International Labor Office, backed by the American Federation of Labor, may be retained.

Just what sort of a "Pandora's box" may be opened by the year-round labors of this new Council and its agencies cannot be appraised at this time. The limitations on activities of the Council appear to be hardly adequate, but there is a provision that none of the purposes should be deemed to authorize the organization to "intervene in the domestic affairs of member states." In view of the declarations of the Preamble and of the part of the Charter dealing with the new Council, it may be controversial as to just what matters are left within the category of the "domestic affairs" of states. The new Court may have to decide.

8. Trusteeships and "Independence"

Lively disputes raged as to just what provisions shall be adopted as to "trusteed" areas and "dependent" peoples. The draft as developed in the Commission declares, with what was thought to be approval by the "Big Five," that the members of the United Nations responsible for administering "territories whose people have not yet attained a full measure of self-government accept it as "a sacred trust" to promote the well-being of those peoples and "to develop self-government" in forms appropriate to the varying circumstances of each territory, etc." Russia and some others wished to state "self-government or independence." Britain objected. The United States agreed informally to include in a section dealing specifically with trusteeships a provision listing as an objective "self-government or independence" in accordance with the will of the dependent people.

Ten days later the "Big Five" made a revision which contains a lot of general phrases but does not mention "independence." Apparently the approved system would guarantee Russia and China permanent seats on the trusteeship council whether or not they ever hold any trusteed areas. The foregoing seems likely to be the final set-up.

9. "Veto Power" in the Security Council

The most publicized controversy of the Conference has arisen from the Yalta Agreement on the voting powers of the "Big Five" in the Security Council. This spirited issue has had many phases.

In the United States, the agreement was at first supposed to be a requirement for unanimous action by the "Big Five" on *enforcement* measures and on amendments of the Charter. That was the State Department interpretation last March.

Later the Soviet Union stated its understanding to be that only "procedural matters" as described in the Dumbarton Oaks Proposals—which matters so described were very limited in scope—were to be left outside the requirement for unanimous action.

In San Francisco, the matter has taken a variety of forms, through differing interpretations. The Soviet Union has insisted that the "veto power" was to apply to a variety of things, including even the discussion and investigation of disputes, as well as active steps to enforce peace. The American delegation, with nearly unanimous support outside the Russian sphere of influence, stood firm for "freedom of discussion and deliberations" in the Council.

After a deadlock for several days, the Soviet Union dramatically gave way on the "discussion" issue. Apparently it thereby won its objectives, in the "Big Five," and finally in the Conference, on the other points. How much of a "concession" it thereby made may be debatable.

Led by Australia and New Zealand, the smaller countries have aggressively demanded either a relaxing of the "veto power" or a more flexible method for amending the Charter. The "Big Five" has stood firm. Lord Halifax declared on June 12 that the outcome would determine "whether we shall or shall not have a World Charter."

It would not be fair to ascribe to the Soviet Union all responsibility for insistence on "veto power." Many have regarded a "veto power" on amendments, for example, to be needed in the interests of the United States. In outlining the "veto power" as he understood it on May 28, Secretary of State Stettinius said that the Yalta agreement requires that the "Big Five" must agree on any enforcement action taken by the Council.

> There would be a similar requirement on action for the peaceful settlement of disputes, except that a party to a dispute must refrain from voting. This requirement, however, does not apply to the right of any Nation to bring a dispute before the Council, and to full discussion of the merits of its case. It applies only when the Council makes a decision involving positive action.

Possession of a power to "veto" investigation or action by the Council does not mean that any member of the "Big Five" will exercise that power except in dire emergency. Possession of the potential "veto" may operate to foster and produce unity, or its exercise may be divisive to the point of disrupting the United Nations. In the latter tragic event, the world would at least be no worse off, it seems to me, than as though there had been no Charter agreed on in 1945, and might in fact be much better off.

10. Regional Arrangements

The draft Charter as it stands at this writing appears to effectuate acceptably the principles declared for by the American Bar Association (31 A.B.A.J. 228), as to continuing arrangements for preserving the peace through regional arrangements such as that in force through the Pan American Union and the Act of Chapultepec so long as such local systems are consistent with the Charter and efficacious in preserving a just peace.

11. Administrative Officers of the Organization

An unexpected issue which has persisted to the last minute has been the insistence of one or more of the

"Big Five"—supposedly Russia—on a requirement of unanimity of action by them in the Security Council in recommending to the Assembly the persons to be elected as Secretary-General, his deputies, and perhaps other administrative agents of the organization. This has been said to stem principally from the experience had by Russia and others, notably at the time of the controverted "expulsion" of the Soviet Union from the League of Nations. The Commission reported for a recommendation by at least seven out of eleven members of the Council.

Inasmuch as these administrative officers naturally carry on a great deal of the work of an international organization, particularly at times when its Security Council or Assembly are not in session, there is insistence thus far that persons objectionable to any of the "Big Five" shall not be selectable for these posts.

12. Right of Withdrawal

Perhaps as a counter-move to meet the insistence on "veto power," a formidable demand developed, with the support of the Soviet Union, during the last ten days of the Conference, for putting in the Charter a specific provision that any member might withdraw from the United Nations at any time. The American delegation was "out in front" in opposition, on the anomalous grounds that the right of any Nation to withdraw is "implicit" in the whole Charter and that it would create a bad impression throughout the world as to the solidarity and probable permanency of the Organization if such a provision were written into the Charter at the last moment.

Apparently it has been determined that no recognition of withdrawal rights will be written into the Charter. The Soviet Union is sponsoring a provision for the expulsion of a member for acts contrary to the purposes of the Charter. This has not gained sufficient support. Also unlikely is a provision for the suspension of a member Nation from privileges of the organization, for cause.

This may be as appropriate a place as any to remind that, as Senator Connally points out elsewhere in this issue, the American delegation has voted as a unit throughout, according to the decisions made by a majority of its members. On more than a few questions, there have been strong and earnest minority views in the delegation. No member of it should be held to be answerable for the delegation's attitude as representing necessarily his own views. There have been a few instances in which the delegation has acted under directions or recommendations from President Truman, but these have thus far related mainly to the carrying out of agreements made by his predecessor. Members of the delegation who are members of the Congress have conformed to the unit rule, but it is understood that they have reserved freedom of action nevertheless, when any matters arising out of the Conference come before the Congress.

13. Admission of Other Members

Countries not now of the United Nations may be admitted later, on such conditions as the Security Council and the Assembly shall prescribe. By an "interpretation" offered by Mexico on June 19 and approved, by entry in the minutes, although not written into the Charter, "defeated Axis governments" and "governments imposed by military forces of the Axis" cannot be admitted at all. The latter proviso was stated to be aimed specifically at the Axis government in Spain.

14. Interim Organization

If and when the Charter is ratified by the fifty member Nations, considerable time will inevitably elapse before the new organization can be a going concern; and this will be at a critical juncture in world affairs. The many steps of organization will not be accomplished in San Francisco, and the Charter will not spring into full organization upon ratification.

There is agreement that there will have to be an interim commission of the United Nations to take the necessary steps. As outlined by the "Big Five," this commission will have its seat in London. It will have administrative authority to arrange for the first meeting of the General Assembly, recommend a location for the permanent seat of the new organization (probably at Geneva), work out the arrangements for the winding up of the League of Nations and taking over its properties, records and affairs, make preparations for the erection of the new Economic and Social Council and the new Secretariat, perhaps initiate the nomination and election of judges of the new Court of International Justice and arrange for taking over the records and properties of the present Court, and like preliminary steps.

As thus far planned, the interim commission would have no powers to deal with the settlement of disputes. That function will await the establishment of the Security Council, which can take place only after the General Assembly has met and elected its non-permanent members.

To some the Charter may appear to be "a bundle of compromises," as Senator Connally declared that it had to be. They have been reasoned, sincere compromises—some of them reluctant and hard fought—based on the realities of diverse and difficult situations. As John Foster Dulles is reported to have said the other day: "An international conference is always a series of 'crises,' one after another." San Francisco was no place for perfectionists. The Dumbarton Oaks Proposals have been greatly amplified, clarified, strengthened, by men who insistently sought agreement and realized always that the will to work together for peace and justice is worth more than any document which could be drafted at this stage. The resultant Charter has both merits and defects; it is a beginning, not the ultimate. In its final form it should be open-mindedly studied by all Americans, and lawyers especially should fulfill their traditional leadership in explaining so intricate a document to the people.

Senator Connally Asks United American Support of the Charter

As a part of the representation of the American Bar Association in San Francisco during the Conference, President David A. Simmons, of Texas, was host at a dinner given at the Bohemian Club on May 21, in honor of Senator Tom Connally, also of Texas, chairman of the Senate Committee on Foreign Relations and vice-chairman of the delegation of the United States at the Conference.

The occasion was social in character, but enabled the bringing together of the Association's representatives and the delegates and advisers of many of the United Nations. In view of the many pressing demands upon his time, the presence of Senator Connally was in itself an expression of his regard for the Association and its members, as well as of his appreciation of the constructive work which the Association has been doing for many months in furtherance of an adequate international organization for peace, justice and law.

Tribute to the American Bar Association

Senator Connally utilized the occasion to make an earnest statement as to the team-work of the American delegation, its objectives, and the vast importance of the formation of an international organization and American participation in it, as the best assurance of forestalling the recurrence of wars. Senator Connally's declaration will be of contemporary interest to our readers when they are forming their opinions as to the worth of the work of the Conference. The American delegation evidently attached importance to its vice-chairman's utterances under Association auspices, as it caused the address to be mimeographed and distributed to the press and to all consultants and associates for the 42 accredited American organizations.

"I acknowledge the distinct honor of being the guest of the American Bar Association here in San Francisco," he said. "The Association has been of very direct and splendid aid to the United Nations Conference, particularly in clarifying opinion in respect to the World Court and the integration of the Court with the Charter of the new International Organization. Juridical processes are an absolutely essential and integral part of any plan for world peace and security. They must be utilized wherever possible in the adjustment of international disputes. Every dispute settled removes a possible cause of war.

United Nations Conference

"The Delegates of forty-nine states are gathered in San Francisco to create an international organization powerful enough to preserve the peace and to give safety and security to the peoples of the world. We face a gigantic task. The reconciliation of the views of so many countries of varying historic backgrounds and divergent approaches to the problems confronting us, has already consumed four weeks of our labors and may possibly consume two or three additional weeks.

"In this connection, no little publicity has been given to the *differences* that exist among the powers here at the Conference. I want to point out that such differences are bound to arise when the representatives of forty-nine nations sit down to frame a constitution as momentous and important as this new Charter. There were differences, far reaching differences, at Philadelphia in the hot summer of 1787 when our own Constitution was agreed upon. Like that Constitution, our new Charter will be a bundle of compromises. Each paragraph, each clause, each word is being slowly but surely hammered out on the anvil of discussion. In my opinion, the way we are settling our differences around the conference table in San Francisco is an excellent example of international democracy in action.

Progress of the Conference

"Notwithstanding our difficulties, we are extremely hopeful that action may be speeded and that we may be able to adopt a charter which will receive the support of the Conference and of the world. Our own delegation is confident that the results of our labors will be acceptable to the people of the United States and will receive Senate ratification.

"I am happy to say that the United States delegation acts and votes as a unit. Though in some matters there have been minor divisions within the delegation, the process of joint discussion has resulted in harmony and unity on every important question. The delegation feels that in reaching an agreement among the five major nations and the representatives of the American Republics on the question of regional arrangements, substantial progress has been made. Our delegation was also successful in securing agreement among the five great powers to an amendment to the Charter which provides

for calling a convention to revise and amend the entire Charter when necessary.

Work in Committees

"Work is going forward in the committees at a satisfactory pace. It must be remembered that such work involves the detailed consideration of scores of important problems. There are pending, for example, hundreds of amendments to the Charter—amendments which have been offered by great and small powers. However, it is believed that measures will soon be taken to limit discussions and to speed the voting. As a result, a substantial quickening of the Conference proceedings will take place within the next few days.

United States Delegation Non-Partisan

"The United States delegation is wholly non-partisan. Both Republican and Democratic members of the delegation are taking an active interest in the work of the Conference and in the promotion of its objectives. There are no party lines in San Francisco. This policy of non-partisanship was adopted by the Committee on Foreign Relations of the Senate more than two years ago. In our conferences with Secretary Hull, when we first began discussing the new international organization, the Committee was represented by an equal number of Republicans and Democrats. We regarded the matter not as a narrow political issue. It is a United States problem. It is one that affects every man, woman and child under our flag. The bitter political feuds over the League of Nations are no more. The American people have come to realize that world peace can only be secured through cooperation among the nations. This cooperation is more important to them than the cheap and tawdry appeal to passion, prejudice and politics.

At the Crossroads

"The United Nations are at the crossroads. We have seen the blood and agony and destruction of the greatest and most devastating war that ever blighted the globe. Even the victors will be weakened and impoverished—much of their wealth wasted and the flower of their manhood maimed or lying in graves in distant lands. We want no more of war. How can that objective be obtained? The great Powers among the United Nations made possible victory in Europe and will make possible victory in Asia by remaining united—by cooperating on the battlefield and at the council table—by making victory the goal of all.

"Our present efforts towards world peace will depend upon the continuation of this unity of purpose, this comradeship of spirit, which is so essential to prevent the recurrence of the horrors and miseries through which we are now passing. There must be no division between the great powers and the small. The small powers are unable to defend themselves against armed aggression. They cannot alone preserve the peace. The great nations are the ones who would be called upon to furnish arms and men in the event of another war. They would pay the terrible toll to the war god.

"Peace can be preserved only by the powers that are able, if need be, to maintain it by armed force. That is the reason unity among the great powers is so essential. The United Nations Conference must recognize this outstanding fact. It must do nothing to endanger world peace by encouraging dissension or division among the great powers.

Responsibility of Americans

"The United States realizes the tremendous responsibility that rests upon it in such a comradeship. It has been marvelously blessed by rich material resources. It possesses extraordinary military and naval power. We will emerge from the holocaust with our homeland untouched by fire or sword. Our cities and homes have not been shattered by bombs. Our fertile fields still yield bounteous crops. Our economy is sound. When victory comes our productive capacity will be the greatest history has ever known.

"Our duty to the world and our duty to ourselves lays upon us the responsibility for full participation in international affairs. It calls for more than participation. We cannot avoid leadership in such a cause—leadership thrust into our hands by destiny and the circumstances of this historic hour.

"Power and responsibility are ours. We must employ them in rising to a courageous and enlightened leadership away from war to peace and security for a wounded and bleeding world."

Paris Via W. U. Cables 1945 June 19

Mrs. Olive G. Ricker
American Bar Association
1140 N. Dearborn
Chicago

CONGRATULATIONS TO YOU AND EDITORS MAY JOURNAL WITH DUMBARTON OAKS RECOMMENDATIONS FIRST AMERICAN PUBLICATION TO REACH MY PARIS OFFICE IN FIVE YEARS BEST WISHES--
PENDLETON BECKLEY.

Limitation on Veto Power

In behalf of the American Bar Association and a large group of organizations accredited as consultants to the American delegation in the San Francisco Conference, President David A. Simmons on May 24 presented to a meeting of the delegates of the United States a signed recommendation that the controversial "veto power" of each of the five principal nations under the Yalta agreements be limited in respect of future amendments of the Charter.

The recommendation was signed by nineteen consultants representing some fifteen accredited groups in the fields of labor, military, veterans, business, law, commerce, civics, religion, education, international relationships, and women's organizations. The American Bar Association headed the list, which is given elsewhere in this issue, in an article by President Simmons.

It was the first time in the history of the American Bar Association that it has been able to join in and lead such a diverse but representative group in a common cause devoted to the public interest. President Simmons was warmly commended for his leadership in bringing about so significant an alignment; and his presentation was received with marked interest and respect, as it went to the heart of one of the most vital issues dividing the Conference.

The proposal of his group, in which the consultants for some of the accredited organizations did not join, was to the effect that the "veto power" of the principal nations over future amendments to the Charter be eliminated, and that amendments other than those which might relate to the purely internal affairs of any member state be authorized on a vote of two-thirds of the Assembly when concurred in by two-thirds of the Security Council including not less than three members holding permanent seats thereon. The text of the recommendation is as follows:

> The undersigned Consultants to the United States Delegation earnestly recommend to the Delegation that it sponsor the following amendment to the existing text of Chapter XI of the Dumbarton Oaks Proposals, this amendment to become Paragraph 2 of Chapter XI and to be as follows:
>
> "2. A general conference of the members of the United Nations for the purpose of amending the Charter shall be held whenever authorized by a vote of two-thirds of all the members of the General Assembly with the concurrence of two-thirds of the Security Council, provided that such two-thirds shall include not less than three of the members holding permanent memberships in the Security Council. Each member shall have one vote in the Conference. Any alteration of the Charter recommended by a two-thirds vote of the Conference, which two-thirds shall include at least three members holding permanent memberships in the Security Council, shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of all the members of the organization, including not less than three members having permanent membership in the Security Council; provided that no amendment of the Charter shall be made, except with the unanimous consent of the members of the Organization, which would confer on the Organization power or authority to deal with the purely internal affairs of any member state."

This recommendation had been worked out by the American Bar Association representatives and the various consultants in the light of the situation as it stood in the Conference up to May 24, but was in general accord with what the Association had recommended on April 4-5 (31 A.B.A.J. 226, 228, 231-2, 235), with the exception of the affirmative provision that "Each member shall have one vote in the (Constitutional) Conference."

The question of the "veto power" of a single principal state over amendments of the Charter, no matter how radical and far-reaching, was spiritedly debated throughout the San Francisco Conference. There was a great diversity of opinion concerning it, even as to its importance to the United States. Many delegates were opposed to giving to any numerical majority or preponderance a "blank check" power to amend the Charter in drastic ways, without the consent and approval of their country (e.g., the United States) through its constitutional processes.

Notice to Members

By direction of the Board of Governors, application was made to the War Committee on Conventions for authority to hold the Annual Meeting of the Association in September. The War Committee suggested that the meeting be deferred and stated that the application for a September meeting would be denied. The Board of Governors accordingly has voted to defer the Annual Meeting and at a later date application will be made to the War Committee on Conventions to hold the meeting the week of December 3.

DAVID A. SIMMONS President

A Canadian Tribute To International Justice

American lawyers are likely to read with interest the following excerpt from the extended remarks of the Honorable J. W. de B. Farris in the Canadian Senate on April 11, in support of the Government's motion that Canada be represented in the San Francisco Conference. His tribute to the work of the World Court and to the great public services rendered by Judge Manley O. Hudson to the cause of international jurisprudence will be echoed and applauded by our readers. Senator Farris is one of the leading lawyers of Canada, is the brother of Chief Justice Wendell B. Farris, of Vancouver, B. C., Chairman of the Canadian Bar Association's Committee on the subject, and has himself been since 1935 an honorary member of the American Bar Association.

"On this debate I have been surprised", declared Senator Farris, "that my colleagues in the legal profession have not said more about the Court of International Justice. As you know, war has always been the court of last resort in international disputes. If you are to take away that final court of decision, something must take its place, and the only logical substitute is a court of international justice. I can sound a note of optimism in that connection. We have had a court of international justice since 1920. There is a member on that court from the United States, although the United States itself never became a member of the League. Professor Manley Hudson of Harvard University is a member of the Court and he has published at least two books giving much information on the development of that court and what it has accomplished. But its accomplishments just touch the fringe of what can and ought to be achieved.

"I sometimes think, honourable senators, that in these days of grim realities there is a danger that we in this country may lose sight of what the justice of our courts means to our people in their relations one to another. Nothing rankles like a sense of injustice. Nothing creates discord and hatred quicker than a sense of injustice. My friend is getting three pieces of butter, and I am getting only one: the resultant sense of unfairness will cause more trouble than some really serious matter. And so it is that in this country, in the development of our democracy which we boast of, the courts and the whole organization of British justice as we understand it, may well be regarded as the bulwark of freedom. I say that with the greatest deference to my friends who live under the civil law, for after all that is the same justice with modifications. I believe that out of the jurisprudence of these two systems, working side by side, we shall develop a greater and a higher conception of justice than perhaps was ever known before.

"What has happened in connection with our courts at home should offer great possibilities for the future in international relationships. There is this to be said. The lawyers of Canada and the lawyers of the United States under their respective organizations, the Canadian Bar Association and the American Bar Association, have in every city in Canada and the United States a highly developed group of special committees intensively working on this question and the studies these lawyers are making are being gradually co-ordinated and will be available to the conference at San Francisco. I regard as of the highest importance the new interest that the legal profession in Canada and the United States is taking in this question of a world court of justice. For the first time in our lives we as lawyers are becoming conscious of international justice. The problems are many and intricate. I will merely mention a few, but I shall not discuss them. Undoubtedly we have a good precedent in the way the present court has been selected.

"The great essential is that these men who are selected shall not be representatives of any particular nation or interest. As lawyers we know and many laymen know too, that the great curse of arbitration is that each side appoints an arbitrator, and both together select an umpire. The net result is that there is only one arbitrator, the other two appointees being advocates behind the scenes. I do not want to see that system followed in our world court. Professor Manley Hudson is a member of the present court of international justice. He is an American; his country is not even a member of the League. He represents no country but a world court of international justice. There is much work to be done, not idealistic work but practical world politics aimed at idealism, in order to develop this court and give it greater powers. But care must be taken at all times not to force its development, for if you go faster than world opinion is ready to follow, you only defeat the purpose of the court."

The British Law Relating to "Running Down" Cases

by Ronald Armstrong-Jones, M.B.E.

BRITISH BARRISTER-AT-LAW OF THE INNER TEMPLE

If the Cause Lists published for the years immediately preceding the present war were analysed it would readily be seen that in the King's Bench Division both in the Royal Courts of Justice in London and in Britain's Assize Courts on Circuit the majority of actions were concerned with claims for personal injuries sustained in motor car collisions. The basic issue in such cases was of course the proof by the injured party of "negligence" on the part of the motorist.

Again, in the majority of such cases the defence raised the issue that the injured person had contributed by his own negligence to his injuries, and if this issue was proved by the Defendant motorist the injured party was disentitled to recover. No question arose as to a "percentage basis" of the degree of the injured party's negligence but merely that his negligence had materially contributed to the collision which had caused his injuries.

In these circumstances a fundamental change in the law relating to cases of this nature—known to lawyers in Britain as "running down" cases—is extremely important, affecting as it will the monetary future of many thousands of litigants.

To anyone who has had much experience in the trials of this type of case two matters stand out in retrospect.

(a) The grave difficulty experienced by juries and even Judges of banishing sympathy for the injured person from their minds in order properly to decide the issue of contributory negligence.

(b) The somewhat "artificial" atmosphere created by the lengthy reconstruction in words of "split-second" decisions of drivers and their effect in the fast moving vehicle they control.

If the bill under discussion becomes law the difficulties of judges and juries under heading (a) will be materially eased because unless it is proved that the damage sustained by the injured party was solely caused by his own negligence he will be entitled to the award of some damages.

Hard cases make bad law and constantly in the past one has felt that in cases where the injuries suffered have been severe the tribunal has had regard to the consequences of its decision before making the decision itself and has throughout the trial set its face against finding contributory negligence and sending the plaintiff away from the court still maimed perhaps for life—with no damages but with a bill for costs to pay.

It is clear that this unhappy state of affairs may still arise in cases where the plaintiff is proved to be solely to blame but in such cases the evidence given will have to be so clear to produce this result that no feeling or sense of unfairness will arise.

So far as (b) is concerned the bill has and can have no effect nor can any remedy be contemplated unless and until the time comes when every accident will be filmed and sound recorded, and even then finality will not be reached because no one accepts the phrase "the camera cannot lie". Despite this, I am optimistic enough to think that decisions in this type of case will as time goes on steadily improve, since they will be made by persons who themselves have been brought up in this mechanical age to drive vehicles and to appreciate the difficulties of all classes of road users.

The main change contemplated by the bill is of course that set out in Section 1 (1) and (4), which provides that if an injured or deceased person is held partly at fault he or his estate or dependents no longer fail to obtain damages, but the negligence is assessed on a percentage basis and deducted from the full amount of damages that the injured or deceased person would have obtained if not at fault at all.

Important and obvious exclusions are made in the proviso to Section 1 (1) to any claim under a contract or to a defence arising thereunder and to claims made by a workman against his employer as set out in Section 2 (1).

A few practical illustrations will, I hope, frame the general picture.

"A" is injured in a collision and brings an action for damages against "B".

(1) If "A" proves that "B" was guilty of negligence that caused the collision, then "A" recovers £X.. damages against "B" for the injuries and loss he has sustained.

(2) If "B" alleges and proves that the collision was caused solely through the negligence of "A" then "A's" action fails and he recovers nothing.

(3) If "A" proves that "B" was negligent and "B" proves that "A" was also negligent then the court will proceed to:

(a) Apportion on a percentage basis the degree of blame attaching to "A" and "B", i.e., "A" 25% and "B" 75%.

(b) Assess the total damages that "A" would have received if blameless, i.e., as in (1) above £X..

(c) Award to "A" £Y damages, i.e., £X minus 25%.

The purpose of (b) above is to comply with Section 1 (2) of the bill, and if a reason is sought for the procedure of recording the total damages it is suggested that it is to simplify the position on appeal and to avoid the necessity of a new trial in the event of a successful appeal by either party on the question of damages.

Generally, when two defendants are sued the plaintiff is a passenger or some other type of innocent party, but it is clear from Section 1 (3) that where, let us say, three vehicles are involved and the driver of one sues the other two, the court if satisfied that blame attaches to all three must apportion the blame to all three and would arrive at the following conclusions.

(1) If the plaintiff had not been negligent then he would have received £1,000.

(2) As he is negligent to the extent of 25% he receives £1,000—25%= £750.

(3) The blame must then be apportioned between the two defendants on a 100% basis.

(i) i.e., if defendant "C" is held to be 33-1/3% to blame he pays 33-1/3% of £750 = £250.

(ii) defendant "D" must therefore be 66-2/3% to blame, and pays 66-2/3% of £750= £500.

Further, if there is a claim and counter-claim and both parties are held to be at fault, then it would seem that after apportionment each party would succeed for the apportioned percentage of his claim, as opposed to the present position of claim and counter-claim being dismissed.

It will be noted that the bill is not retrospective and it will be difficult not to sympathize with those injured or the representatives of those killed and the day before this bill becomes law if they are "partly at fault"; but this is a state of affairs which is inevitable unless the bill is made retrospective, and even then some time limit and some hardship would arise.

At first blush lawyers were inclined to think—and I have heard them say—that if "contributory" negligence was abolished as a defence on "liability", that litigation would materially decrease. I personally hold the opposite view and consider that the courts will continually be asked to solve the degree of blame attaching to the various parties owing to the extreme reluctance of individuals ever to assume that they themselves are in some measure to blame.

I not only think that lawyers can view the future with equanimity but in my opinion this bill is a great step forward, and if it becomes law it will have the effect of eradicating a sense of grievance and injustice from the minds of persons "partly at fault".

The main object of the majority of statutes and regulations forming the present avalanche of wartime legislation is to restrict the liberty of the subject and detract—let us hope temporarily—from the rights and benefits that have been acquired over the centuries through the wise and ever broadening administration of the Common law. But this bill in my opinion not only has the merit of being simple and concise in language but also is a serious attempt to add to and extend the legal rights of a large section of the people of Britain.

Notice By The Board Of Elections

As a result of the ballots cast by the members of the Association in Puerto Rico, the Board of Elections announces that Martin Travieso, San Juan, has been elected State Delegate for that jurisdiction for the three-year term to begin at the conclusion of the 1945 Annual Meeting.

This notice did not appear with the story published in the June Journal, announcing other State Delegates recently elected, because the polls were not closed for receipt of ballots from Puerto Rico until June 14, 1945.

EDWARD T. FAIRCHILD
Chairman, Board of Elections

Committee on War Work

A meeting of the Special Committee on War Work was held at the Drake Hotel, Chicago, Illinois, on May 22, 1945. Present were Chairman Edward Schoeneck, Pinckney L. Cain, Jeremiah L. Cadick, Lawrence C. Spieth and Harry S. Rooks for the committee; Lieutenant Colonel Milton J. Blake, Chief, Legal Assistance Branch, Office of the Judge Advocate General of the Army; Commander Richard Bentley, Chief of Legal Assistance, Office of the Judge Advocate General of the Navy; and Colonel F. Cleveland Hedrick, Jr., Assistant General Counsel, Selective Service System.

The purpose of the meeting, as explained by Chairman Schoeneck, was consideration by the committee of the recommendations which had been presented to and adopted by the Board of Governors at its meeting of April 6. These recommendations, which outlined in general terms the future course of the committee's program, were now to be more concretely and concisely formulated, for purpose of distribution to state and local war work committees cooperating with the Association, for appropriate action thereon by such committees.

Before the recommendations were specifically considered, Commander Bentley, Colonel Blake and Colonel Hedrick each made a brief statement as to the work of his department, as it related to the program of the war work committee.

The immediate problem, as stressed by each of the officers, was to ensure that there would be no slackening of the present program. The task of rendering adequate legal assistance to men in the armed forces is bound to increase, rather than decrease, after cessation of hostilities in Europe, and with the release of men from the actual battle front.

Colonel Blake emphasized that the reorganization and movement of troops taking place since V-E day has greatly complicated the legal assistance problem. Discharge or reassignment is making necessary the designation of many new legal assistance officers, he said. Men who are released from the battle front, who are on furlough, or who are being transferred to the Pacific theatre turn their attention to their personal affairs. The Legal Assistance Branch of the Army, he said, was reordering materials in much greater quantities than originally required, and appointing many new legal assistance officers.

Commander Bentley stated that the problems of redeployment in the Navy are not so acute as in the Army. The Navy has fewer units and fewer legal assistance officers in the European area than in the Pacific area; and a great many of these officers are stationed on shipboard, so that their work is not interrupted by the movement of the naval units. He emphasized, however, that the problems with which the legal assistance officers have to cope are increased in proportion to the distance and length of absence of the naval units and personnel from home.

Selective Service, Colonel Hedrick explained, is charged not only with getting men into the armed forces, but also with the responsibility of assisting discharged servicemen in readjustment to civilian life. After separation from the forces, the veteran is advised to go back to his local selective service board to get new credentials, and for assistance in getting back his old job or finding a new one. Any dispute between employer and employee is referred first to the Selective Service Board; if it cannot be solved, it is then referred to the United States attorney. At the time of separation from the forces, the serviceman receives a physical and psychological check-up, and is given help and advice in finding employment. Sometimes legal problems are presented, arising out of service or out of the change of status to civilian life. The Selective Service Board, he said, would like to know what it may tell the men with respect to securing needed legal advice.

It was agreed that consideration of an Association program falls under two main heads: decision as to the point at which responsibility for legal assistance to the man in military service comes to an end; and the extent of service to be rendered to veterans.

In this connection a number of questions were raised: Is the end of the war to be considered the time when the shooting stops, or when the man is discharged from the armed forces? Is service to be rendered to the occupation troops which will remain abroad, or to peacetime armies? How greatly will the work to be done be affected by the number of lawyers remaining in the armed forces? Is service to be rendered to the widows and orphans of service men, although the man is no longer, technically, a member of the armed forces? Upon discharge from the forces, is assistance to be continued upon matters which have been commenced before severance, or to be undertaken upon matters growing out of service in the armed forces? How far is the legal assistance program to extend to the problems of veterans?

It was stated by each of the officers that there was no desire to indicate the answers to these questions, but it was emphasized that it was important that a program be defined, so that legal assistance officers might be in a position to answer inquiries, and to tell the men just what they might expect from the civilian bar. It was pointed out that legal assistance is not merely rendering gratuitous service; it is giving legal advice, and referring the serviceman

to a proper lawyer, who will do the necessary work at a reasonable fee. During the period of the war, the bar has created great good will, and established friendly relations with thousands of persons who had never before had contact with a lawyer. The results of this good relationship could be jeopardized by either terminating the program prematurely, or by undertaking to do more than the human resources of the organized bar would justify.

The recommendations of the War Work Committee which had been submitted to and adopted by the Board of Governors at its meeting on April 6 were then discussed at length. A drafting committee, consisting of Messrs. Cadick, Rooks and Spieth, was appointed to draft specific and concrete recommendations for presentation to and action upon by state and local bar association war work committees. This draft in turn was considered by the committee, and the following recommendations were finally adopted:

1. That the highly effective and indispensable services being so generously rendered by War Work Committees to members of the armed forces and their dependents under the joint legal assistance program of the Army, Navy and Bar be vigorously continued.

2. That such legal assistance be extended to veterans of the present war and, in their behalf, to their widows, orphans and dependents, with regard to personal legal problems arising as a result of or during service with the armed forces, to be available for a period of six months following separation from active service, and for such additional period as may be necessary or appropriate.

3. That service be rendered, where requested by United States attorneys, in the enforcement of the rights of discharged service men and women to reinstatement in their old employment under the provisions of the Selective Training and Service Act, or other federal acts relating thereto.

4. That assistance be rendered in the liquidation of obligations deferred under the Soldiers' and Sailors' Civil Relief Act, and in the protection of any rights under that Act, for the period provided by the Act, and long enough to include the completion of any matters undertaken during that period.

5. That no steps be taken by bar organizations to qualify under the so-called G. I. Bill of Rights, or in connection with claims or rights that may be asserted against the Federal Government or any agency thereof. It is recommended, however, that state and local bar associations see that suitable means are provided and publicized for veterans to obtain representation in matters of this sort requiring the services of individual counsel.

6. That the state and local bar associations be encouraged by War Work committees to establish an adequate placement program for returning lawyer veterans.

It was agreed that the Chairman would request each member of the committee to write to the state and larger local war work committees within his circuit, sending to each a copy of the recommendations with the request that they be passed upon and, if possible, adopted by the respective committees, associations, or governing bodies, the conclusions to be communicated to the chairman of the American Bar Association committee as promptly as possible.

Association Award to West Point Cadet

Garland S. Landrith, Jr., of Lawrence, Kansas, is the winner of the 1945 American Bar Association award to the cadet having the highest standing in law studies of each year's graduating class at the United States Military Academy, West Point. This award was presented for the first time in 1941.

Cadet Landrith is the son of Mr. and Mrs. G. S. Landrith. He was appointed to the Military Academy by Representative U. S. Guyer, 2d District, Kansas, for the class to enter July, 1942, and before entering the Military Academy was a student at the University of Kansas, having won the Summerfield Scholarship to that university. Upon graduation from the Military Academy, he will enter the Corps of Engineers.

AMERICAN BAR ASSOCIATION

Journal

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"Toward United Nations"

As this issue of the JOURNAL goes to press, the epoch-marking conclave of the United Nations is completing its work, under circumstances which assure agreement. Soon the historic podium, where the voices of peoples seeking the way to a new understanding and accord resounded in many languages, will be silent; and the results of their deliberations will be submitted hopefully for the approving judgment of mankind.

As was predicted here a month ago, the Conference fashioned a Charter of the United Nations, which will be effective upon its ratification by the respective countries according to their constitutional processes. The fateful issue between ratification and rejection will arise immediately in the United States. It is a matter upon which every lawyer, and every other citizen, should form and express his own unhurried opinion, upon careful weighing of all of the pertinent considerations. The reasoned and deliberative public opinion of America is certain to carry great weight, in the Senate of the United States and in other countries of the world.

The summaries which have been prepared, under the pressures of available time, and are published in this issue, will be found informative as to what was drafted and done, as to the Charter, the World Court, and the Statute of the Court. More detailed analysis and exposition of controversial issues are reserved until the final texts can be closely examined.

The policy and attitude of the American Bar Association toward acceptance and advocacy of the Charter will, in due time, be decided by the representative body of the Association—its House of Delegates. To that end, each member of the Association will do well to communicate his views to his State Delegate and to each of the representatives of his bar organizations in the House of Delegates. Such an expression by our membership is especially desirable in the light of the fact that any general convocation of the Association in 1945 is not likely to be attended as largely as usual, in view of the wartime restrictions on travel. Pending official action by the Association, the JOURNAL will continue to espouse with such vigor as it can the principles and objectives repeatedly declared by the Association (30 A.B.A.J. 650-659, 683-687; 31 A.B.A.J. 226-235).

Consistently with the Association's action, it seems appropriate to point out that the outstanding achievement of the Conference was not so much the Charter or the Statute produced, as the extent and solidarity of the accord and agreement arrived at despite many and serious obstacles arising largely from events distant from the Conference and uncontrollable by anything which could be said or done in San Francisco. Probably no other three months in human history saw so many and such poignant events, or confronted leadership with such baffling problems, many of which revived ancient and divisive suspicions and rivalries in a world ill-prepared for them; and nearly all of these had unavoidable impacts on the delegates and their advisers. That agreement was achieved at all, against such a background of history, is in itself a demonstration of the sincerity and tenacity of the efforts for accord and of the skill and understanding with which the delegations worked together with that objective in sight.

Few, if any, will suggest that the documents drafted in the Conference of the Golden Gate fulfill completely the hopes, the aspirations, the purposes or the wishes of any individual, any nation, or any group of nations. The assemblage which began boldly and bravely on a high note of devotion to justice and international law, found itself compelled to accept compromises and some half-way expedients, which stop short of what the American Bar Association and many others had urged as highly advisable in the interests of adequate and effective international organization. The history of bodies convened to formulate organic law or new structures of government attests that such an experience is inherent in their nature and the clashes of interest which come to the fore. It was so with the Convention which drafted the American Constitution, although the delegates spoke a common language and came from a relatively small area on one continent.

Aside from the fact that the United Nations did agree upon a Charter to be the beginnings of an international organization for peace, justice and law, the significant and sobering realization is that the document itself could not have been so fashioned as to assure the accomplishment of its objectives. The enforcement of peace and the strengthening of the rule of law will depend, not so much on what was put to paper, as on the unity, cooperation, and firmness of purpose, of the member Nations, particularly the five principal Na-

tions. It may suffice for the present if the Charter is found to contain suitable procedures and safeguards, through which the United Nations will find it practicable to consult and cooperate, to keep unceasing vigil against threatened aggression, to settle dispute by peaceful means and according to law, and to go on working together in peace as they have in war.

Whether this has been sufficiently implemented in the submitted Charter is a matter on which the first impressions of men may and do differ, pending full and close scrutiny. Whether the proposed procedures are too closely restricted for efficacy is a matter on which experience may best provide the test. To have insisted on inserting more drastic or thorough-going provisions at this stage might have prevented agreement or might have planted the seeds of disintegration.

In many countries, including our own, zealous men and women will doubtless continue to work for amendments of the Charter, if it is approved, to the end that evolutionary growth shall provide the strengthening which could not be imparted in San Francisco and may be sorely needed when the hours of test and travail come. Presumably the Nations depleted by the long duration of the war will keep the peace voluntarily for some years to come; meanwhile, it is urged, the needed amendments can be discussed and urged, perhaps made effective, before the new organization is subjected to its severest stresses. Ratification will thus be favored by many who do not accept the Charter as adequate, but look on the opportunities offered by acceptance of the present beginnings as far preferable to the chaotic consequences of outright rejection.

The Charter *is* a beginning; it has many merits tested by the principles declared by the American Bar Association, as well as some inadequacies and defects. It *can* be made as effective as the United Nations, particularly the five principal Nations, are willing to work together to make it. Its future, and the hopes of mankind that it will some day become a Magna Charta protective of the rights of nations and the dignity of human beings under law-governed liberty, are in the hands of the United Nations, their leaders, and their peoples. For the present, there has at least been made clear, through the Charter, the high resolve of the United States and many other peoples that, as expressed by General Dwight D. Eisenhower to Marshall Georgi K. Khukov on June 10, "We are going to have peace even if we have to fight for it."

All that led up to the great Conference, all that took place in it and during it, are now history. The great issues as to ratifying the Charter, helping to make it work, amending and strengthening it as shown to be needed, accustoming leaders and peoples to the peaceful settlement of disputes, broadening the scope and authority of international law, and creating such a *climate* of amicable relationships between States as prevails, for example, among the members of the far-flung British Commonwealth of Nations—these are the engaging tasks for the leadership and the public opinion of today, tomorrow and years to come. To this turning-point in the world's history there can aptly be applied the aphorism on the cornerstone of the National Archives Building in Washington: "What is past is prologue."

An International Court of Justice

Disappointing and disturbing as the San Francisco decisions to discard the Permanent Court of International Justice and erect a new tribunal were to many lawyers, at least at first impression, this particular outcome should not lead to pessimism as to the merits of the Charter—or as to the future of international adjudication.

The first item in the summary of the combined views of Canadian and American lawyers, expressed through their twenty-five Regional Conferences, was that "An international court of justice should form an integral part of the United Nations Organization." (31 A.B.A.J. 173). That has been accomplished, in almost identic phraseology. More important, the substance of nearly all of the advance registered by the splendid service of the existing World Court since 1920 has been held; and some further gains have been won. The new International Court of Justice, when it comes into being, will be in an improved and singularly secure position to do its part in establishing a law-governed world of peace, justice, and security for the nations, small and large.

The heartening unity and militancy of informed opinion which was manifested by the members of the profession of law throughout the United States and Canada, for the first time in the history of the organized Bar, have not been in vain. American lawyers strongly preferred the retention of the World Court as an institution and the present Statute of the Court, with only such modifications as were necessary to adapt them to the new international organization. They envisioned as the very keystone of the structure an impartial, law-governed tribunal to which all peace-loving Nations would be parties and before which any wrong-doer or disputant Nation might be haled, for the determination of controversies according to justice and law, before they become provocative.

There will be lasting regret that decisions or compromises at the political level led to the supersession of the existing Court, the creation of a hiatus during which there will be no Court, and the limitation of participation for at least the time being, to members of the United Nations, with the resultant absence of States such as Sweden, Switzerland, and Portugal, which have been staunch adherents of the Court and have made substantial contributions to international law and adjudication. Probably such a concept of the Court, as of other

organs of the United Nations, was a logical and inescapable aftermath of the state of mind which was ascendant in the hours following victory over Germany. Certainly such compromises were believed to be essential to preserving, for the tremendous tasks of the peace, the unity and teamwork which had enabled the United Nations to wage victorious war. Probably it seemed essential to agreement on a Charter. If this was so, who will say it was too great a price to pay?

In any event, even those who disagree profoundly with the decisions as to the Court should at least understand and frankly appraise the practical factors which led to them, and should also evaluate the overall results. In the deliberations of a great Conference, made up of men and women of many countries, languages, and backgrounds, no one group can have its way. Compromises and mutual concessions are essential to accord; these were sincerely and rationally made.

Sixteen parties to the existing Statute are not members of the United Nations—they did not declare war against the Axis. These include such Nations as Sweden Switzerland, and Portugal; but they include also nations of controversial status, such as Spain, Finland, Eire, as well as Axis Nations. If the existing Statute were continued as such, how could the United Nations sort out and exclude, as parties to the Statute, those countries whose course has made them objectionable as participants in the selection of judges? The practicable course was deemed to be to start with a new Statute, to which only the United Nations would be parties, and then to select and admit others on such conditions, if any, as were deemed to be appropriate.

Again: Four of the twelve living members of the present Court, under the "hold-over" provision of its Statute, are from countries not of the United Nations. These are jurists who have served most acceptably; but if the existing Court had been incorporated into the United Nations, judges from Spain, Italy, Finland, and Rumania, respectively, would have been on the bench at least until their successors are nominated and elected. Although a large majority of the delegations wanted continuity as to the Court and everyone praised its contributions to peace and law, some of the Nations which had borne the brunt of the war were unwilling to accede to such a continuance of judges from Axis lands.

The outcome points strongly that the lawyers of the United States, Canada, and other lands, need to keep unceasingly at their labors in behalf of international law and adjudication. Yet there are no reasons for discouragement in the present outcome—only for vigilance and renewed efforts.

There are forty-eight parties to the present Statute; the new Statute will start with fifty and others will be admitted. Save in the respects already discussed, the new Statute follows very closely the old, and has been considerably improved. There is no other backward step in the Statute. Chapter X of the Charter recognizes the present Statute as the basis for the new. The present method of nominating and electing judges is retained; the "veto power" of a principal state does not apply in the selection of the judges. The seat of the Court will remain at The Hague, but the Court may sit *en banc* elsewhere. The Court will have its present number of judges; members of the present Court are eligible to election, if they come from the United Nations. The jurisdiction of the present Court is fully maintained; the new Statute goes to the limits of language in retaining for the new Court the jurisdictions conferred by some four hundred treaties, multipartite agreements and declarations now in force. A large majority of the delegations favored a sweeping extension of obligatory jurisdiction or the constructive suggestion offered by the Canadian and American Bar Associations; but it was not deemed advisable to insist on such an extension at this time, in view of the opposition of several Nations not yet accustomed to the submission of their controversies to courts. Nearly all of the recommendations made by the Canadian and American Bar Associations (31 A.B.A.J. 224-225, 235), have been embodied in the new Statute.

The International Court of Justice will be an integral part, and one of the principal organs, of the United Nations and the new Charter. The position of the Court will be singularly independent and secure, in that it cannot be abolished or the Charter provisions as to it substantially changed, over the objection of any one of the principal Nations. In this respect the "veto power" as to amendments will tend to make the Court secure against the hostility, if incurred, of any State or group of States. Whether the "veto power" of any one of the "Big Five" applies also to amendments of the Statute cannot be determined with certainty at this writing. In any event, there is a marked advance from the position of the present Court in relation to the League of Nations. Above all, the new Charter places an emphasis on justice and international law, and declares various principles and basic objectives, which will greatly strengthen the hand of the Court and hearten all its adherents, as they resume the long struggle for the government of international relations by rules of law and accepted standards of better understanding and fair play.

The earnest, patient efforts of peace-loving men and women, in the profession of law and outside it, to broaden and strengthen the rule of law in international affairs and to substitute impartial adjudication for discretion and force, were not begun in this generation, did not culminate in San Francisco, and will not end in the lifetime of any now living. Those charged with responsibility and opportunity, in each generation, have to do what they can, as they see the right. This has been done by those met in San Francisco; the unfinished tasks remain greater than those accomplished. The great cause of international justice marches on.

Review of Recent Supreme Court Decisions

by Edgar Bronson Tolman*

Marriage and Divorce—Full Faith and Credit—Domicil

Williams v. *North Carolina*, 89 L. ed. Adv. Ops. 1123; 65 Sup. Ct. Rep. 1092; U. S. Law Week 4424 (No. 84, argued October 13, decided May 21, 1945.)

This case should be of interest and concern to many of the five million divorced persons in the United States according to the census reports. It must also be of importance to the whole bench and bar of the country. It is of much more vital and critical concern to those persons whose divorces were obtained in states in which a domicil was sought to be obtained for the mere purpose of obtaining a divorce, intending not to remain in those states longer than necessary for that purpose.

This case first came to the Supreme Court of the United States in 1942. The Nevada divorce of the accused and their subsequent marriage in Nevada were held to be entitled to full faith and credit in the courts of North Carolina. The decision in that case, reversing a judgment convicting Williams and his wife of bigamous cohabitation *(Williams* v. *North Carolina*, 317 U. S. 287; 29 A.B.A.J. (1943) 86) is now declared by the Court, on its second appearance, to have been based upon a record which did not take into account important considerations passed upon in the instant case as will hereinafter more fully appear.

Mr. Justice FRANKFURTER delivered the opinion of the Court. He reviews the history of the full faith and credit clause and says, "But the clause does not make a sister-state judgment a judgment in another state." He shows that the proposal so to do was rejected by the Philadelphia convention. He declares that a judgment in one state could only be made a judgment in a sister-state by a suit on that judgment brought in the courts of the sister-state.

Mr. Justice FRANKFURTER makes clear the difference between the two prosecutions. He says, "When this case was first here North Carolina did not challenge the findings of the Nevada court that petitioners had acquired domicil in Nevada. For her challenge of the Nevada decrees, North Carolina rested on *Haddock* v. *Haddock*, 201 U. S., 562, and two of her own decisions of similar purport. Upon retrial however the existence of domicil in Nevada became the decisive issue". He states that the record on that issue now before the court in the second review may be fairly summarized as follows: "The petitioners left North Carolina for the purpose of getting Nevada divorces from their respective spouses, and . . . as soon as each had done so and married one another they left Nevada and returned to North Carolina to live there together as man and wife." Nothing in the record shows any denial of those facts. He further says that against the charges of bigamous cohabitation in the second prosecution "petitioners stood on their Nevada divorces and offered exemplified copies of the Nevada proceedings."

On the question of domicil Mr. Justice FRANKFURTER says, "Under our system of law, judicial power to grant a divorce—jurisdiction, strictly speaking—is founded on domicil," and he cites on this point *Bell* v. *Bell*, 181 U. S. 175 and *Andrews* v. *Andrews*, 188 U. S. 14. In support of that proposition, those cases and many others are cited and analyzed. Declining to impair the power and jurisdiction of the respective courts and stating the extent to which the doctrine of "like faith and credit" extends Mr. Justice FRANKFURTER says, "The problem is to reconcile the reciprocal respect to be accorded by the members of the Union to their adjudications with due regard for another most important aspect of our federalism "whereby 'the domestic relations of husband and wife . . . were matters reserved to the states,' . . . and do not belong to the United States."

In answer to what was said in the briefs, on the oral arguments, and perhaps in the conference room, Mr. Justice FRANKFURTER says: "In seeking a decree of divorce outside the state in which he has theretofore maintained his marriage, a person is necessarily involved in the legal situation created by our federal system whereby one State can grant a divorce of validity in other States only if the applicant has a *bona fide* domicil in the State of the court purporting to dissolve a prior legal marriage. The petitioners therefore assumed the risk that this Court would find that North Carolina justifiably concluded that they had not been domiciled in Nevada." Illustrations are given of instances of cases where a man's fate depends on compliance with a law of which he may have no knowledge and by way of illustration reference is made to the Sherman Law and other statutes, and it is said "mistaken notions

*Assisted by JAMES L. HOMIRE; Tax cases by Committee on Publications of the Section of Taxation, Mark H. Johnson, chairman; patent case by HAROLD F. WATSON.

about one's legal rights are not sufficient to bar prosecution for crime."

Mr. Justice FRANKFURTER concludes his opinion with the statement that "North Carolina was not required to yield her State policy because a Nevada court found that petitioners were domiciled in Nevada." He says that North Carolina was entitled to ascertain the truth on that issue and that Nevada was "without power to liberate the petitioners from amenability to the laws of North Carolina governing domestic relations."

Mr. Justice MURPHY filed a concurring opinion in which the CHIEF JUSTICE and Mr. Justice JACKSON joined. This opinion emphasizes that Nevada was without jurisdiction to give extraterritorial validity to the divorce decree and that North Carolina was not compelled by the Constitution to give full faith and credit to the Nevada decrees. This concurring opinion, meets the argument of dangerous implications in the conclusion reached by the Court by saying, "All of the uncontested divorces that have ever been granted in the forty-eight states are as sure today as they were yesterday or as they were before our previous decision in this case. Those based upon fraudulent domicils are now and have always been subject to later reexamination with possible serious consequences."

Mr. Justice BLACK filed a dissenting opinion, in which Mr. Justice DOUGLAS concurred. He declares that he is unable to reconcile the decision of the majority with the full faith and credit clause and with Congressional legislation passed pursuant to it. He states with emphasis his fear that widespread consequences may follow the decision. He says, "Statistics indicate that approximately five million divorced persons are scattered throughout the forty-eight states. More than 85% of these divorces were granted in uncontested proceedings. Not one of this latter group can now retain any feeling of security in his divorce decree." No statistics are cited (nor is it likely that they are available) as to what portion of these uncontested decrees were rendered in favor of those who left their home states and went to another state for the purpose of obtaining a divorce.

Mr. Justice BLACK also emphasizes the serious consequences of the decision falling upon innocent parties to a remarriage and to children subsequently born and he protests vigorously against what he calls, "this latest expansion of federal power and the consequent diminution of state power over marriage and marriage dissolution." There is a painstaking analysis of many decisions and an argument from analogy as to the relation of jurisdiction and domicil in other fields of law.

In closing his dissenting opinion Mr. Justice BLACK says, "In earlier times, some rulers placed their criminal laws where the common man could not see them, in order that he might be entrapped into their violation. Others imposed standards of conduct impossible of achievement to the end that those obnoxious to the ruling powers might be convicted under the forms of law. No one of them ever provided a more certain entrapment than a statute which provides a penitentiary punishment for nothing more than a layman's failure to prophesy what a judge or jury will do.

Mr. Justice RUTLEDGE also filed a dissenting opinion. He inveighs against what he calls "the ghost of 'unitary domicil' ". Throughout his dissent he challenges the doctrine that divorce rests on domicil. He challenges its justice and attacks the soundness of its policy. He points out that the Nevada judgment "has not been voided", and says that it could not be, if subject to the same test as the North Carolina conviction.

His view of the constitutional question is stated as follows: "I do not believe the Constitution has thus confided to the caprice of juries the faith and credit due the laws and judgments of sister-states. Nor has it thus made that question a local matter for the states themselves to decide."

Pointing to the serious character of a declaration of one state that the action of another is illegal, he says: "Conceivably it might have been held that the full faith and credit clause has no application to the matters of marriage and divorce. But the Constitution has not left open that choice." In answer to the thesis of the prevailing opinion that "We must have regard also for North Carolina's laws, policies and judgments" he says, "And so we must. But thus to state the question is to beg the controlling issue. By every test remaining effective, and not disputed, Nevada had power to alter the petitioner's marital status. She made the alteration. If it is valid, neither North Carolina nor we are free to qualify it by saying it shall not be effective there, while it is effective in Nevada, and stands without impeachment for ineffectiveness there."

Mr. Justice RUTLEDGE concludes his discussion of the case, in the following words, "I therefore dissent from the judgment which, in my opinion, has permitted North Carolina at her substantially unfettered will to deny all faith and credit to the Nevada decree without in any way impeaching . . . that judgment's constitutional validity."

The case was argued by W. H. Strickland for Williams and by Hughes J. Rhodes for North Carolina.

Esenwein v. *Commonwealth ex rel. May H. Esenwein.* 89 L. ed. Adv. Ops. 1152; 65 Sup. Ct. Rep. 118; U. S. Law Week, 4439. (No. 20, argued October 12 and 13, decided May 21, 1945).

This is a companion case to *Williams* v. *North Carolina,* supra. The facts differ slightly in detail but the legal problems are almost identical.

Esenwein tried vainly to secure a divorce in Pennsylvania where he and his wife both resided. In the course of that litigation the wife obtained an order in the county court, Allegheny County, Pennsylvania, for separate maintenance. Esenwein went to Las Vegas, New Mexico, arriving there on June 23, 1941. Six weeks later he filed a suit

for divorce. It was granted September 8, 1941. Soon thereafter he left New Mexico and took up his residence in Cleveland, Ohio, where he made his home. On February 1, 1943 he filed application to the Pennsylvania court for total relief from the separate maintenance order. That court denied his application. The Supreme Court of Pennsylvania affirmed and certiorari was allowed by the Supreme Court of the United States. The judgment of the Supreme Court of Pennsylvania was affirmed.

MR. Justice FRANKFURTER delivered the opinion of the Court. He follows the general line taken in the main case and points out that the differences in the record facts do not call for any change in the final result.

The case was argued by Mr. Sidney J. Watts for William F. Esenwein and by Mr. J. Thomas Hoffman for May H. Esenwein.

Criminal Law—Deprivation of Rights, Privileges and Immunities—Conspiracy

Screws v. *U. S.*, 89 L. ed. Adv. Ops. 1029; 65 Sup. Ct. Rep. 1031; U. S. Law Week 4397. (No. 42, argued October 20, decided May 7, 1945).

A Georgia sheriff with the aid of a policeman and a special deputy arrested Robert Hall, a citizen of the United States and of Georgia on a warrant charging him with the theft of a tire. In the arrest he was beaten with fists and a blackjack, and after his arrest and while handcuffed he was knocked to the ground and beaten with a blackjack until he was unconscious. He died without regaining consciousness. The sheriff and his aids were indicted by a Federal Grand Jury on charges of violating and of conspiring to violate Sec. 20 of the Criminal Code of the United States, which provides that "whoever under color of any law . . . wilfully subjects . . . any inhabitant of any state . . . to the deprivation of any rights, privileges or immunities secured or provided by the Constitution and Laws of the United States . . . shall be fined not more than $1000 or imprisoned for not more than one year or both."

The case was tried by a jury. A verdict of guilty was returned and a fine and term of imprisonment was imposed on each count.

The Circuit Court of Appeals Fifth Circuit affirmed the judgments —one judge dissenting.

The case was taken on certiorari and the Supreme Court reversed the judgment.

Mr. Justice DOUGLAS delivered the opinion of the Court.

At the outset of his opinion it is declared that the case involves "a shocking and revolting episode in law enforcement."

The Court proceeds to examine the defense presented for the sheriff and his aids. They contended that Sec. 20 was unconstitutional, insofar as it attempts to make criminal those acts which are in violation of the due process clause of the Fourteenth Amendment. In particular it had been urged that an indictment charging acts which deprived any citizen of the rights, privileges and immunities vouchsafed by the Fourteenth Amendment, even if those acts resulted in the taking of life and if they were punishable by the laws of the state where those acts were committed, constitute no Federal offense. It had also been urged that Sec. 20 was so vague and indefinite that it gave no information as to the offense charged and was therefore void for indefiniteness.

Many other points were raised and passed upon but the two above referred to were the principal ones on which the controversy turned.

Mr. Justice DOUGLAS reviewed the cases in which Sec. 20 had been sustained, other than those having relation to deprivation of the right of the citizen to vote. The legislative history of the act was also examined. From these sources the conclusion was plainly drawn that the original purpose of that section was to protect the right to vote.

Finding conflict in some of the decisions and entertaining serious doubts whether the construction urged by the government did not render the Section so vague and general as to lack the essentials of a specific charge, Mr. Justice DOUGLAS says: "We hesitate to say that when Congress sought to enforce the Fourteenth Amendment in this fashion it did a vain thing. . . . Only if no construction can safeguard the Act from this claim of unconstitutionality are we willing to reach that result." The conclusion is therefore stated that "if Sec. 20 should be confined more narrowly than the lower courts confined it, it can be preserved as one of the sanctions to the great rights which the Fourteenth Amendment was designed to secure."

Much of the argument had revolved around the interpretation of the word "wilfully", which had been inserted in Sec. 20 by amendment. Mr. Justice DOUGLAS reaches the conclusion that the severity of the sanctions of the Civil Rights Act were intended to be lessened by making it applicable only where a wilful bad purpose was presented.

So construed, Mr. Justice DOUGLAS declares that the attack upon the section based on a lack of an ascertainable standard of guilt must fail, and on this point he says: "One who does act with such a specific intent is aware that what he does is precisely that which the statute forbids." And again he says: "Indeed, the narrow construction which we have adopted more nearly preserves the traditional balance between the States and the national government in law enforcement than that which is urged upon us."

The jury has been instructed by the trial court that the petitioners acted illegally if they applied more force than was necessary to make the arrest effectual as to protect themselves from the prisoner's alleged assault, but in view of the Court's construction of the word "wilfully" it is said that the jury should have been further instructed that "to convict, it was necessary for them to find that petitioners had the purpose to deprive the prisoner of a constitutional right, e.g., the right to be tried by a court rather than by ordeal."

It had been argued by the accused that exception had been taken to the charge. To this Mr. Justice DOUGLAS says: "Where the error is so fundamental as not to submit to the jury the essential ingredients of the only offense on which the conviction could rest, we think it is necessary to take note of it on our own motion."

And finally the contention of the accused that they did not act "under color of any law" within the meaning of Sec. 20 was rejected. After the review of many cases the interpretation of the *Classic* case was adopted. Distinguishing two lines of cases Mr. Justice DOUGLAS says: "We are not dealing here with a case where an officer not authorized to act nevertheless takes action. Here the state officers were authorized to take such steps as were necessary to make the arrest effective. They acted without authority only in the sense that they used excessive force in making the arrest effective."

Because of the procedural error in the instruction of the jury, it was declared there must be a new trial, and the reversal was for that purpose.

Mr. Justice RUTLEDGE concurred in the result, but his concurring opinion is full of dissent. Stating the reasons for his concurrence he says that without his vote the case could not have been disposed of, and that "stalemates should not prevail for any reason, however compelling, in a criminal case." He says that since his views concerning the appropriate disposition of the case are more nearly in accord with those stated by Mr. Justice DOUGLAS in the prevailing opinion, he casts his vote for reversal. However, Mr. Justice RUTLEDGE does not fail to make clear the points in which he does not concur with the prevailing opinion. He declares that the accused do not come here "as faithful state officers innocent of crime", and that the argument now admits the offense but insists it was "against the state alone, not the nation." He further says, "The defense is not pretty nor is it valid . . . the evidence has nullified any pretense that petitioners acted as individuals about their personal though nefarious business."

Mr. Justice RUTLEDGE does not agree to that part of the prevailing opinion which yields to the attack on Sec. 20 for vagueness and seeks to avoid that attack by a more narrow construction of its language. From a thorough exposition of this point a single quotation will illustrate his views. He says that its phrases "are all phrases of large generalities. But they are not generalities of unillumined vagueness; they are generalities circumscribed by history and appropriate to the largeness of the problems of government with which they were concerned."

The clearest manifestation of dissent in this concurring opinion involves the question of federal power. On this vital point of departure Mr. Justice RUTLEDGE says: "Lying beneath all the surface arguments is a deeper implication which comprehends them. It goes to federal power. It is that Congress could not in so many words denounce as a federal crime the intentional and wrongful taking of an individual's life or liberty by a state official acting in abuse of his official function and applying to the deed all the power of his office."

In conclusion Mr. Justice RUTLEDGE says: "The right not to be deprived of life or liberty by a state officer who takes it by abuse of his office and its power is such a right. To secure these rights is not beyond federal power. This Sections 19 and 20 have done, in a manner history long since has validated. Accordingly, I would affirm the judgment."

Mr. Justice ROBERTS, Mr. Justice FRANKFURTER and Mr. Justice JACKSON joined in a dissenting opinion. It emphasizes the fact that the Fourteenth Amendment is an instrument for striking down action by the states in defiance of law; that by the Thirteenth Amendment slavery was abolished; that in order to secure equality of treatment for the emancipated, the Fourteenth Amendment was adopted at the same time, and that the Bill of Rights followed as a guarantee of compliance with the new rights. The dissenting opinion declares that their theory of the majority opinion is that Congress made it a Federal offense for a state officer to violate the explicit law of his state. That view is rejected by the dissenting justices and it is said: . . . "assuming unreservedly that conduct such as that now before us, perpetrated by state officers in flagrant defiance of state law, may be attributed to the state under the Fourteenth Amendment, this does not make it action under "color of any law." That thesis is thoroughly elaborated and buttressed by the history of the constitutional amendments and of the statutes involved.

The dissenting opinion concludes as follows: "The complicated and subtle problems for law enforcement raised by the Court's decision emphasize the conclusion that Sec. 20 was never designed for the use to which it has now been fashioned."

Mr. Justice MURPHY also dissented. He reaches the conclusion that the conviction of the defendants was justified and that the judgments of the two courts below should have been affirmed.

The case was argued by Mr. James F. Kemp for Screws and by Mr. Solicitor General Fahy for the United States.

Civil Rights—Race Discrimination in Selecting Jury.

Akins v. *Texas*, 89 L. ed. Adv. Ops. 16, 65 Sup. Ct. Rep. 1276; U. S. Law Week 4467 (No. 853, argued April 30 and May 1, decided June 4, 1945.)

Akins, a colored man, was convicted by the verdict of a jury for murder with malice. Judgment was entered on the verdict and the death penalty was imposed. The Texas criminal court of appeals affirmed the judgment. On the trial and appeal and on petition for rehearing the accused claimed discrimination on account of his race in violation of the equal protection and due process clauses of the Fourteenth Amendment. The Supreme Court of the

United States allowed certiorari because of the important questions of constitutional rights so raised. The case was duly heard, considered, and the judgment of the Texas Court affirmed.

The discrimination was said to consist of an arbitrary and purposeful limitation by the jury commissioners of the number of negroes to be placed on the grand jury panel. Under Texas law the commissioners were required to select a list of sixteen grand jurymen from which list twelve were to be chosen. Of the sixteen so selected only one was a negro. No other errors of procedure were pointed out.

Mr. Justice REED delivered the opinion of the Court. He cited and analyzed the cases in which that class of discrimination had been considered and ruled upon by the Supreme Court. It appears from the opinion that there was not complete unanimity in the form of expression of the jury commissioners who were called by the accused as witnesses on the trial.

It is pretty clear, however, that the jury commissioners at the time of the handling of this particular grand jury, thought that one negro was enough, but their testimony also supported the view that this belief was not based on an intention to discriminate and that there was a real purpose to comply with the law.

Mr. Justice REED defines the issue to be, whether the jury commissioners deliberately, intentionally and purposefully limited the number of negro race that should be selected on that grand jury panel to one member, and says, "Fairness in selection has never been held to require proportional representation of races upon a jury." Citing many cases he says: "The number of our races and nationalities stands in the way of evolution of such a conception of due process or equal protection." Many cases are reviewed in support of that proposition and the doctrine of those cases is applied to the evidence in this case and Mr. Justice REED says that although there are some inconsistencies and conflicts of testimony in regard to limitation of the number of negroes on the grand jury, yet "the trier of fact who heard the witnesses in full and observed their demeanor on the stand has a better opportunity than a reviewing court to reach a correct conclusion as to the existence of that type of discrimination."

Although the claim of right to proportional representation in numbers was rejected, it was remarked that about 15½% of the population of Dallas County, Texas, is Negro, and Mr. Justice REED says: ". . . We cannot say that the omission from each of the two lists of all but one of the members of a race which composed some fifteen per cent of the population, alone proved racial discrimination."

After a complete review of all the testimony in the record bearing on the question of discrimination, Mr. Justice REED says, "A careful examination of these statements in connection with all the other evidence leaves us unconvinced that the commissioners deliberately and intentionally limited the number of Negroes on the grand jury list."

Mr. Justice ROBERTS concurred in the result. The CHIEF JUSTICE, Mr. Justice BLACK and Mr. Justice MURPHY dissented.

The case was argued by Mr. A. S. Baskett and Mr. W. J. Durham for Akins and by Mr. Benjamin T. Woodall for Texas.

Blue Sky Law—Statutes of Limitations—Lifting Bar Against Liability in Pending Litigation

Chase Securities Corporation v. *Donaldson et al.*, 89 L. ed. Adv. Ops. 1009; 65 Sup. Ct. Rep. 1137; U. S. Law Week 4417. (No. 110, argued February 27, decided May 21, 1945).

On appeal from a judgment of the Supreme Court of Minnesota the appellant attacked as violative of the Fourteenth Amendment a provision of Minnesota statutes enacted as part of a general revision of the State's Blue Sky Law. The effect given by the state Supreme Court to the provision was to lift the bar of the statute of limitations in pending litigation. This the appellant contended amounts to a taking of property without due process of law.

The Supreme Court affirmed in an opinion by Mr. Justice JACKSON. The opinion sets forth the history of the litigation and observes that the "substantial federal questions which survive the state court decision are whether this case is governed by *Campbell* v. *Holt* [115 U. S. 620] and if so, whether that case should be reconsidered and overruled."

The conclusion is reached that that case is controlling, is sound, and should not be overruled, so far as it applies to the case at bar.

Mr. Justice DOUGLAS did not participate.

The case was argued by Mr. Henry Root Stern for Chase and by Mr. Benedict S. Deinard for Donaldson et al.

Bankruptcy—Reorganizations Under Chapter X—Termination of Lease by Bankruptcy.

Finn v. *Meighan*, 89 L. ed. Adv. Ops. 1086; 65 Sup. Ct. Rep. 1147; U. S. Law Week 4423. (No. 953, argued April 27, decided May 21, 1945).

The lessee, operator of a chain of restaurants, petitioned for reorganization under Chapter X of the Bankruptcy Act; its petition was approved. The lease provided that if the tenant shall be adjudged bankrupt or insolvent by any court the term shall immediately cease and come to an end. The bankruptcy trustee advised the lessor that he desired to assume the lease; but the lessor asserted that the lease had terminated by virtue of the bankruptcy and petitioned for an order adjudging that the lease was at an end. The bankruptcy court so decreed, and the Circuit Court of Appeals affirmed.

On certiorari the order was affirmed by the Supreme Court in an opinion by Mr. Justice DOUGLAS. The opinion rejects the contention that § 70 (b) of the Bankruptcy Act

rendering this type of clause enforceable, as it was prior to the enactment of that section, does not apply to Chapter X proceedings. It also rejects a contention based on the New York Debtor and Creditor Law.

The case was argued by Mr. Joseph Lorenx for the trustee in bankruptcy and by Mr. Burton C. Meighan for the lessor.

Sherman Anti-Trust Act—Suits Against Export Associations for Violation of Act—Effect of Webb-Pomerene Act

United States Alkali Export Association et al v. *United States*, 89 L. ed. Adv. Ops. 1077; 65 Sup. Ct. Rep. 1120; U. S. Law Week 4440. (Nos. 1016, 1017, argued May 1 and 2, decided May 21, 1945).

Suit was brought in the Southern District of New York under § 4 of the Sherman Anti-Trust Act to restrain the defendants, foreign corporations and an American subsidiary, all producers of Alkalies, from violations of that Act. The defendants moved to dismiss on the ground that exclusive jurisdiction of the matters charged is vested in the first instance in the Federal Trade Commission, under § § 1, 2, and 5 of the Webb-Pomerene Act of April 10, 1918. The motion was denied, and the defendants petitioned the Supreme Court for certiorari under § 262 of the Judicial Code, seeking review of the denial of the motion to dismiss. The order of the District Court was affirmed. Mr. Chief Justice STONE delivered the opinion of the Court. He points out that two questions are presented for decision, namely: (1) whether the order is reviewable by certiorari under § 262 of the Judicial Code; and, if so, (2) whether §§1, 2, and 5 of the Webb-Pomerene Act confer exclusive jurisdiction on the Federal Trade Commission to pass, in the first instance, on alleged violations of the Sherman Act by export associations.

The Court concludes that the order in question is reviewable on certiorari under § 262 of the Judicial Code, and that the Webb-Pomerene Act does not confer exclusive jurisdiction on the Federal Trade Commission, as contended by the defendants.

Mr. Justice ROBERTS concurred as to the question of jurisdiction under § 262 of the Judicial Code; but dissented from the decision that the District Court had power to take the cause in the absence of an investigation and recommendation by the Federal Trade Commission.

The case was argued by Mr. William Dwight Whitney for the petitioners and Mr. Assistant Attorney General Berge for the Government.

Sherman Anti-Trust Act—Wilson Tariff Act—Injunction Against Disposing of Property Pending Outcome of Civil Suit—Review under § 262 of Judicial Code.

De Beers Consolidated Mines, Ltd. v. *United States*, 89 L. ed. Adv. Ops. 1115; 65 Sup. Ct. Rep. 1130; U. S. Law Week 4443. (Nos. 1189, 1190, argued May 2, decided May 21, 1945).

The United States filed a complaint against the petitioners foreign corporations, and against certain individuals, seeking equitable relief based on a charge that the defendants were conspiring to restrain and monopolize commerce of the United States with foreign nations in gem and industrial diamonds, in violation of §§1 and 2 of the Sherman Act and § 73 of the Wilson Tariff Act. With the complaint a motion was filed for a preliminary injunction to restrain all the corporate defendants from withdrawing from the country any property located in the United States until determination of the issues and compliance with the court's orders. In support of the motion the Government stated that the injury to the United States from withdrawal of deposits, diamonds and other property would be irreparable because sequestration of the property is the only means of enforcing the court's orders against the foreign corporate defendants.

Counsel for the defendants appeared specially and moved to dissolve the temporary injunction which had been granted; but the motion was denied and the injunction was continued in force. The defendants then applied to the Supreme Court for a writ of certiorari under § 262 of the Judicial Code which provides in part: "The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

The Supreme Court granted the writ, held that the district court had exceeded its jurisdiction in granting the injunction and reversed the decree. Mr. Justice ROBERTS delivered the opinion of the Court.

As to the propriety of review by certiorari, reference is made to the *Alkali Export* cases, numbers 1016 and 1017, supra, and it is said: "If the preliminary injunction here granted, unless set aside, will stand throughout the course of the trial and for an indefinite period after its termination, and if the order was beyond the powers conferred upon the court it is plain . . . that the petitions present an appropriate case for the exercise of our jurisdiction under § 262."

Whether the district court had jurisdiction to enter the order is said to turn on the "usages and principles of law" in accordance with which it may proceed under § 262. An analysis of those usages and principles led to the conclusion that the district court had no jurisdiction to enter the order.

Mr. Justice DOUGLAS delivered a dissenting opinion in which Mr. Justice BLACK, Mr. Justice MURPHY and Mr. Justice RUTLEDGE concurred.

The case was argued by Mr. William Dwight Whitney for DeBeers, by Mr. John M. Harlan for Societe Internationale Forestiere et Miniere du Congo and Compania de Diamantes de Angola and by Mr. Herbert Berwan for the United States.

Federal Communications Act of 1934—Jurisdiction of Commission Over Hotel Charges for Long Distance Messages.

Ambassador, Inc. et al v. *United States et al.*, 89 L. ed. Adv. Ops. 1103; 65 Sup. Ct. Rep. 1151; U. S. Law Week 4419. (No. 446, argued March 9 and 12, decided May 21, 1945.)

The Federal Communications Commission, after investigation, found that it had jurisdiction, under the Communications Act of 1934, over the charges collected by hotels and others for services in connection with long distance telephone calls.

In the District of Columbia the companies operating there filed a tariff which provided: "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that the use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

The equipment used in performance of the service is leased from the telephone companies and operating costs are borne by the lessees. In the past the charges for the long distance service have varied from 10c a call to a maximum of $3.00 per call.

Suit was brought, after the new tariff became effective, to forbid the hotels from charging their guests other than in accordance with the tariff, for interstate or foreign messages. The District Court sustained the validity of the tariff and granted an injunction. On appeal the Supreme Court affirmed. The opinion of the Court was delivered by Mr. Justice JACKSON.

As to the jurisdiction of the Commission he says:

"The supervisory power of the Commission is not limited to rates and to services. . . . But where a part of the subscriber's business consists of retailing to patrons a service dependent on its own contract for utility service, the regulation will necessarily affect, to that extent, its third party relationships. Such a regulation is not invalid per se merely because it places limitation upon the subscriber as to the terms upon which he may invite others to communicate through such facilities."

Rejecting an attack on the regulation as unreasonable, the Court points out that determination of that question must be made in a proper proceeding addressed to the Commission as an original matter.

Mr. Justice BLACK and Mr. Justice DOUGLAS did not participate.

The case was argued by Mr. Parker McCollester for the hotels and by Mr. Solicitor General Fahy and Mr. T. Brooke Price for the Government.

Patents—Patent for Printing Ink Held Invalid for Want of Invention

Sinclair & Carroll Company, Inc. v. *Interchemical Corporation*, 89 L. ed. Adv. Ops. 1099; 65 Sup. Ct. Rep. 1143; U. S. Law Week 4422 (No. 656, argued April 5, decided May 21, 1945).

Interchemical Corporation, assignee of U. S. Patent No. 2,087,190, issued to Albert E. Gessler, brought suit against Sinclair & Carroll Company, Inc. alleging infringement. The claims of the patent cover a printing ink which is substantially non-drying at ordinary temperatures and dries instantly on heating of the printed matter, consisting of coloring matter dispersed in a medium consisting in part of a solvent having a low vapor pressure at ordinary temperatures, and a relatively high vapor pressure when heated within the temperatures to which paper may be heated without damage.

The district court held the patent invalid, and also held that the defendant's inks did not infringe. The circuit court of appeals reversed the district court, holding the patent valid and infringed.

Mr. Justice JACKSON delivered the opinion of the Court, pointing out that the particular solvents selected by Gessler were procurable on the open market at the time of his alleged invention and were known to possess the desired vapor-pressure characteristics and, likewise, that it was recognized prior to Gessler's work that the existence of such a solvent was all that was necessary to the perfection of an ink having the desired characteristics. The Court concluded that the patent was invalid for lack of invention, stating that, "selecting a known compound to meet known requirements is no more ingenious than selecting the last piece to put into the last opening in a jig-saw puzzle."

In passing, the Court noted that there has been a tendency among the lower federal courts to dispose of infringement suits where possible on the ground of non-infringement without deciding the question of validity, but that it "has come to be recognized, however, that of the two questions, validity has the greater public importance . . . and the district court in this case followed what will usually be the better practice by inquiring fully into the validity of this patent."

The case was argued by Mr. William D. Mitchell for Sinclair & Carroll Co., Inc., and by Mr. Robert W. Byerly for Interchemical Corporation.

State Taxation—Imports from Foreign Countries and Philippine Islands—Original Package Rule

The Hooven & Allison Co. v. *Evatt, Tax Commissioner of Ohio*, 89 L. ed. Adv. Ops. 852, 65 Sup. Ct. Rep. 870; U. S. Law Week 4334. (No. 38, argued Nov. 7 and 8, 1944, decided April 9, 1945.)

The Hooven & Allison Co. purchased bales of hemp and other fibers through brokers located in the United States who represented the foreign producers. The fibers were brought from the Philippine Islands or from foreign countries and were stored in the original packages in which they had been imported in the company's warehouse at its factory in Ohio, preliminary to their use by the company in the manufacture of cordage. Ohio assessed taxes on the fibers; the State Board of Tax Appeals sustained the assessment and the Supreme Court of Ohio affirmed.

That court rejected the company's argument that the fibers were imports, immune from taxation by the state under Article I, of § 10, cl. 2, of the Constitution, which provides that "no State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports except what may be absolutely necessary for executing its inspection Laws . . .". The State Court recognized the rule of *Brown* v. *Maryland*, 12 Wheat. 419, that imports in their original packages may not be taxed by a state until sold, removed from the original package, or put to the use for which they are imported. However, the court was of the opinion that the present case fell within the qualification of the *Brown* v. *Maryland* rule established by *Waring* v. *The Mayor*, 8 Wall. 110, which held that imports are immune from state taxation only so long as they remain in the hands of the importer. On the basis of this distinction the state court concluded that the company was not an importer after sale had been made to it. The Supreme Court granted certiorari because of the novelty and importance of the constitutional questions raised.

The CHIEF JUSTICE delivered the opinion of the Court. It is held that both the fibers imported from foreign countries and those brought in from the Philippine Islands could not constitutionally be taxed by Ohio. The CHIEF JUSTICE's opinion deals with three questions: (1) whether with respect to the fibers brought from foreign countries the company was their importer, and if so (2) whether after storage in the company's warehouse they continued to be imports at the time the tax was assessed, and (3) whether the fibers brought from the Philippine Islands were likewise imports within the constitutional provision despite the place of their origin.

The opinion concludes that the company not only caused the importation, but that the purpose and consequence of the importation were to supply the company with raw material for manufacturing purposes. It is held that the company was the efficient cause of the importation, and that the merchandise in its hands was entitled to the constitutional tax immunity even after the delivery of the imports to it.

In the second portion of his opinion, the CHIEF JUSTICE examines the original package doctrine of *Brown* v. *Maryland* and finds that no different rule is applicable where the importation is for manufacturing purposes than where the importation is for purposes of sale. The opinion concludes on this point that there is "no convincing practical reason for abandoning the test which has been applied for more than a century, or why, if we are to retain it in the case of imports for sale we should reject it in the case of imports for manufacture. Unless we are to ignore the constitutional prohibition we cannot say that imports for manufacture are not entitled to the immunity which the Constitution commands, and we see no theoretical or practical grounds for saying, more than in the case of goods imported for sale, that the immunity ends while they are in the original package and before they are devoted to the purpose for which they were imported."

The final portion of the opinion deals with the question of whether fibers brought from the Philippine Islands are also imports, immune from state taxation, or whether only articles brought from foreign countries are to be classed as imports within the meaning of the constitutional provision. The CHIEF JUSTICE points out that no definition of the term "imports" is provided in the Constitution. He finds that language used by Chief Justice MARSHALL in *Brown* v. *Maryland* indicates that imports are to be defined by reference not to their foreign origin, but to the physical fact that they are articles brought into the country from some place without it. This necessitates the ascertainment of the territorial limits of the "country" into which they are brought, and raises the question of whether the Philippines have been united governmentally with the United States by and under the Constitution. The CHIEF JUSTICE refers to the history of the acquisition of the Philippine Islands by the United States and to various taxing acts and statutes as supporting a finding that the Philippines are a territory not constitutionally united with the United States. He concludes that "practical as well as theoretical considerations and the structure of our constitutional system require us to hold that articles brought from the Philippines into the United States are imports."

A dissenting opinion was written by Mr. Justice BLACK. He takes the position that the doctrine of *Brown* v. *Maryland* is applicable only in the case of an importation for sale: where the goods are imported for the importer's own use they are not immune from state taxation. Mr. Justice BLACK supports his view by referring to the rejection in *Brown* v. *Maryland* of the argument that the original package doctrine would permit an importer to bring in goods for his own use and thus retain valuable property exempt from taxation. Mr. Justice DOUGLAS, Mr. Justice MURPHY and Mr. Justice RUTLEDGE joined in the opinion of Mr. Justice BLACK. Mr. Justice DOUGLAS stated, however, that, "accepting the Court's ruling that these products are 'imports', the rule should be applied without discrimination against the Philippines."

Mr. Justice MURPHY wrote a separate opinion in which he concurs in Mr. Justice BLACK's view that constitutional tax immunity was lost at the time of storage in the company's warehouse pending its use in manufacturing. However, he adheres to that part of the majority opinion holding that merchandise shipped from the Philippines constitutes an import.

A separate opinion was written by Mr. Justice REED, dissenting from that part of the majority opinion which held that the Philippines are not a part of this country for purposes of construction of the term "import." Mr. Justice REED states that an "import" should be interpreted to mean an article brought from beyond the sovereignty or jurisdiction of the United States.

The case was argued by Mr.

Luther Day and Mr. Curtis C. Williams, Jr. for the Hooven & Allison Co. and by Mr. Aubrey A. Wendt, assistant attorney general, for the State of Ohio.

Taxation—Dividend in Recapitalization—Time for Appeal

Commissioner of Internal Revenue v. *Estate of Edward T. Bedford*, 89 L. ed. Adv. Ops. 1093; 65 Sup. Ct. Rep. 1157; U. S. Law Week 4437. (No. 710, argued March 29, decided May 21, 1945.)

The taxpayer was a stockholder who participated in a recapitalization whereby the corporation issued new common and preferred stock plus cash in exchange for outstanding preferred. The purpose of the recapitalization was to eliminate a book deficit. The value of the new stock alone exceeded the taxpayer's basis of his old stock, but this gain was concededly nontaxable as an exchange in reorganization. The Commissioner, however, asserted that the cash was taxable as an ordinary dividend. The question was whether the distribution of cash here "has the effect of the distribution of a taxable dividend" under section 112(c)(2) of the Revenue Act of 1936, which section is the same as in the present Code. The Second Circuit held that the cash was taxable only as capital gain under section 115(c) because the recapitalization was a "partial liquidation" within the meaning of section 115(*i*). Moreover, the court held that the cash could not be taxed as a dividend because the corporation had previously capitalized its earnings by a nontaxable stock dividend. 144 F. (2d) 272.

The decision was reversed in an opinion by Mr. Justice FRANKFURTER. The Court noted that the parties agreed that the corporation had sufficient earnings to cover the cash distributed, and thereby impliedly overruled the second ground for the lower court decision. It then held that a distribution of cash under such circumstances is taxable as a dividend under the reorganization provisions of section 112, and that the partial liquidation definition is inapplicable. "That the company's treatment of its stock dividends may bring consequences under state law requiring a capital reduction does not alter the character of the transactions which bring them within the federal income tax."

The taxpayer argued also that the government's petition for certiorari was untimely, because not filed within three months after the filing of the opinion by the circuit court, although filed within three months after the entry of the "order for mandate." The Supreme Court held that the "entry of judgment" referred to in section 8(a) of the Judiciary Act should be taken to mean the latter date, but suggested that the circuit court establish "a more tidy system for meeting the technical requirements for review here."

The case was argued by Miss Helen R. Carloss for the Commissioner of Internal Revenue, and by Mr. Erwin N. Griswold for Estate of Edward T. Bedford, Title Guarantee and Trust Company.

Taxation—Suit for Refund—Waiver of Defect in Claim

Angelus Milling Co. v. *Commissioner of Internal Revenue*, 89 L. ed. Adv. Ops. 1089; 65 Sup. Ct. Rep. 1162; U. S. Law Week 4446. (No. 610, argued March 7 and 8, decided May 21, 1945.)

The taxpayer's suit for refund of processing taxes under the Agricultural Adjustment Act was dismissed by the tax court for a defect in the claim, despite the taxpayer's contention that the defect had been waived by the Commissioner. The dismissal was affirmed by the circuit court, and certiorari was granted because of an alleged conflict. The decision was affirmed in an opinion by Mr. Justice FRANKFURTER, from which Mr. Justice DOUGLAS dissented without opinion.

The Court recognized that the Commissioner may waive technical defects in a refund claim. "Even tax administration does not as a matter of principle preclude considerations of fairness." But, the Court continues, "The showing should be unmistakable that the Commissioner has in fact seen fit to dispense with his formal requirements and to examine the merits of the claim. It is not enough that in some roundabout way the facts supporting the claim may have reached him. The Commissioner's attention should have been focused on the merits of the particular dispute. The evidence should be clear that the Commissioner understood the specific claim that was made even though there was a departure from form in its submission." In the case under consideration, the Court held that no such "unmistakable" waiver had been established, and upheld a dismissal of the taxpayer's refund proceedings.

The case was argued by Mr. Prew Savoy for Angelus Milling Co. and by Mr. J. Louis Monarch for the Commissioner of Internal Revenue.

ERRATA

In the review of *Cramer* v. *U. S.*, June issue, page 302, third column, line seven from end of page, delete the words "by a divided court". [Apologies to the judges of the court of appeals, Second circuit.]

Mrs. Harry S. Knight, wife of the Secretary of the American Bar Association, died on June 2 at their home at Sunbury, Pennsylvania, after a long illness. Besides her husband, she is survived by one son, Frederick H. Knight, of Philadelphia.

Willis Smith Nominated for President

WILLIS SMITH, of Raleigh, North Carolina, was chosen by the State Delegates as nominee for President of the Association for the year 1945-1946. Upon recommendation of the Board of Governors and by vote of the State Delegates, as prescribed in Article VIII, Section 1, paragraph 2, of the Constitution, the nominations were conducted by mail ballot in lieu of the usual nominating meeting of State Delegates.

Mr. Smith was born in Norfolk, Virginia, on December 19, 1887, the son of Willis and Mary Creecy Smith. The family subsequently moved to Elizabeth City, North Carolina. After securing his preparatory education at Atlantic Collegiate Institute, he graduated in 1919 from Trinity College, now Duke University, with an A. B. degree, and thereafter attended the Duke University Law School, completing his legal education in 1912.

After being admitted to the Bar in September, 1912, Mr. Smith immediately began the practice of law in Raleigh. For five years, beginning with 1915, he was Inheritance Tax Attorney for the State of North Carolina, at the same time continuing his general practice, which was interrupted in 1918 by service in the United States Army.

In 1919 he was married to Anna Lee of Waynesville, North Carolina, and they have four children, Willis Smith, Jr., Lee Creecy Smith, Alton Battle Smith, and Anna Lee Smith.

Mr. Smith served in the North Carolina House of Representatives in the sessions of 1927, 1929, and 1931, and was Speaker of the House in 1931. He was a member of the Board of Managers of the American Legislators Association in 1932-1933. In 1940 he was Chairman of the Democratic State Convention and in 1944 he was a Delegate from his district to the Democratic National Convention in Chicago.

In 1932-1933 he was a member of the committee that prepared rules for use in the federal courts in North Carolina. Since 1933 he has been a member of the Federal Judicial Conference of the Fourth Circuit.

WILLIS SMITH

He was elected member of the General Council of the American Bar Association in 1935, and thereafter was State Delegate, during the years 1936-1939. He became a member of the Board of Governors for 1941-1944, and during the last year of his term was Chairman of the Budget Committee.

Mr. Smith was President of the North Carolina Bar Association for 1941-1942, and has been President of his local Wake County Bar Association. He was President of the International Association of Insurance Counsel for the years 1941-1943. He is a member of the American Counsel Association, the American Law Institute, the American Judicature Society, and the Newcomen Society of England.

He is a member of the American Legion and the Society of 40 & 8, as well as holding membership in the following fraternities and honorary societies: Sigma Phi Epsilon, Omicron Delta Kappa, Phi Delta Phi and Order of the Coif. Mr. Smith is also a Trustee of Duke University and Chairman of the Committee having in charge the Duke Law School; a Director in Occidental Life Insurance Company, Royal Cotton Mill Company, Dexdale North Carolina Company, and other business organizations.

Officers and Governors Nominated

Nominations for officers and incoming members of the Board of Governors were conducted by mail ballot for the first time this year, under an amendment to the Constitution adopted in 1942, which states that the Board of Governors may recommend that the nominating meeting of the State Delegates be not held in the current year "because the state of the Nation or the financial condition of the Association makes the holding of such meeting inadvisable."

According to the procedure set out in Article VIII, Section 1, paragraph 2, of the Constitution, the State Delegates, by formal mail ballot, voted to accept the recommendation of the Board of Governors that the nominating meeting be not held in 1945, whereupon the balloting for nomination of officers and the four incoming members of the Board of Governors proceeded by mail, as prescribed.

As a result of this mail ballot, Willis Smith, of Raleigh, North Carolina, was nominated by the State Delegates for the office of President for the year 1945-1946. Mr. Smith served as member of the Board of Governors from 1941-1944, and as Chairman of the Association's Budget Committee for the year 1943-44. He was President of the North Carolina Bar Association in 1941-1942. A sketch of his life and professional work is published elsewhere in this issue.

For the office of Treasurer, the State Delegates nominated Walter M. Bastian of Washington, D. C. Mr. Bastian was President of the Bar Association of the District of Columbia in 1936, and preceding that, was Treasurer of the same association for a number of years. He was a member of the American Bar Association's Washington Committee in 1943-1944.

For membership on the Board of Governors for three-year terms to begin with the adjournment of the 1945 Annual Meeting, the nominations made by the State Delegates were as follows:

First Circuit: Henry C. Hart, of Providence, Rhode Island, who has served as a member of the Committee on State Legislation since 1936, and as a State Delegate since 1943.

Second Circuit: Deane C. Davis, of Barre, Vermont, who has been active in the Vermont Bar Association and served as its President; has been a member of the Resolutions Committee and the Committee on State Legislation; and has been a State Delegate since 1942.

Sixth Circuit: Mitchell Long, of Knoxville, Tennessee, who has served as a member of the Committee on Aeronautical Law, and as a State Delegate.

Tenth Circuit: William O. Wilson, of Cheyenne, Wyoming, who was a member of the former Committee on Noteworthy Changes in Statute Law and the Committee on State Legislation; and has been a State Delegate since 1936.

Nominations for Officers and Members of the Board of Governors of the American Bar Association

THE Secretary of the Association, Harry S. Knight, certifies for publication in the American Bar Association Journal that, the State Delegates having voted not to hold a nominating meeting in 1945, in accordance with the provisions of Article VIII, Section 1, paragraph 2 of the Constitution, the nominations for officers and members of the Board of Governors were conducted by mail ballot as provided in that article; and that as a result of this ballot, the following persons were nominated for the following named offices of the Association, to be voted upon by the House of Delegates at its next annual meeting:

For President:	WILLIS SMITH, Raleigh, North Carolina
For Secretary:	The nominee for Secretary has declined to accept the nomination*
For Treasurer:	WALTER M. BASTIAN, Washington, D. C.
For Members of the Board of Governors:	
First Circuit:	HENRY C. HART, Providence, Rhode Island
Second Circuit:	DEANE C. DAVIS, Barre, Vermont
Sixth Circuit:	MITCHELL LONG, Knoxville, Tennessee
Tenth Circuit:	WILLIAM O. WILSON, Cheyenne, Wyoming

* Attention is called to Article VIII, Section 2 of the Constitution, which provides for nomination by petition. The date for the Annual Meeting having been set for Monday, September 10, seventy days in advance of this date will be July 2, and forty days in advance will be August 1. Petitions must be filed between these two dates.

"Books for Lawyers"

KOREA AND THE OLD ORDERS IN EASTERN ASIA. *By M. Frederick Nelson. Baton Rouge: Louisiana State University Press. April 30, 1945. $3.75. Pages xvi, 326, with index, appendices, and bibliography.*

This timely book is a contribution to current efforts of Americans to understand the conflicting concepts of life, government, and international relationships, which of necessity enter deeply into the organization and cooperation of the Nations for peace, justice and security. The San Francisco Conference at all stages has stressed this striving for the bases of a common understanding, even more than the diligent attempts to write into the Charter workable formulae for a continuation of the cooperation which was not always easy under even the pressures of waging war against the common enemies.

Lieutenant Nelson (j.g.) who studied law at the University of Mississippi, taught government in several institutions, and is now in the Military Government Section under the Chief of Naval Operations, has reconstructed in this volume the Confucian international system, as it existed up to the time when the Western nations involved themselves in the Far East and challenged the Asiatic orders with what the author regards as Western concepts of "international law." Taking Korea as illustrative, he depicts the orders as they held sway before Japan's aggressive bid for territory on the Continent of Asia and before the Western Powers imposed on Korea a transitory national independence according to international law, which proved far less protective than her "dependence" on China under the international system which molded the Far East for centuries.

To establish his thesis of two divergent systems which came into sharp conflict and led to Korea's subjection to Japan, Professor Nelson traces the series of diplomatic events which preceded that unhappy event. His treatment is factual and well-documented. Nevertheless, the question arises as to whether or not the two "orders" are as sharply different and as irreconcilable in philosophy as his analysis first assumes, and then tries to demonstrate that they were and are.

Certainly the jurists of China have made splendid contributions to international law, have aided greatly in the work of the Permanent Court of International Justice, and in San Francisco have manifested a most understanding and enlightened attitude towards the problems of international justice according to law. Indeed, few delegations in the Conference have been more generally in accord with the principles and objectives advocated by the American Bar Association; and the work of Dr. Wang-Chung-Hui has been outstanding. He was a member of the World Court until 1936, and his translation of the German Code into English is standard – a monumental feat of scholarship and of comprehension of the legal concepts both of pre-war Germany and of the English-speaking countries.

In any event, the signs in San Francisco have been many and unmistakable that in the search for a new spirit of working out difficult problems without too many preconceptions, the West and its notions of "sovereignty" have much to learn from the non-legal or familistic sense of community which prevailed in the states led by followers of Confucius. On the other hand, the statesmen and jurists of China have shown great adaptability in their discussions with diplomats trained in what the author depicts as essentially Western concepts of international law, and have even taken the lead, at times, for giving a broader scope to international adjudication and an enhanced authority to international law. In the crucible of the great Conference, philosophies and points of approach have been fused as never before. Just as there is urgent need for understanding Russia, there is vital need for comprehending China and utilizing the wisdom which its ageless lore can bring to the service of mankind. Professor Nelson's delineation of divergent systems will be helpful to Americans who seek the historical backgrounds for issues, but the actual areas of conflict between East and West as to outlook on international law may prove not as extensive or as tenaciously held as are those beset by the "balance of power" politics of the European Continent and the Near East.

WILLIAM L. RANSOM
San Francisco, California

UGOLOVNAYA OTVETSTVENNOST GITLEROVTZEV *(Criminal Responsibility of the Hitlerites). By Professor A. N. Trainin. Moscow: Institute of Law, Academy of Sciences, of the U.S.S.R. 1944. Pages 107.*

Proponents of Soviet Russia's projected treatment of war criminals have reiterated that they will not be limited by traditional legalisms in punishing master-criminals of the Axis. Expressing concern lest the Governments of Great Britain and the United States might be too lenient, the Soviet Government long refused to participate in the United Nations War Crimes Commission. The Soviets have cited the resignation of Sir Cecil Hurst as chairman on January 4, and the replacement of Herbert C. Pell as American member. Although the circumstances of these two retirements have not been made public and may fully justify

them, some commentators have assumed that international political considerations were given precedence over summary justice. Contemporary Russian jurists have expounded their concepts of justice in the light of prevailing political expediencies, both domestic and international.

The Soviet Government, by Decree of November 2, 1942, created the Extraordinary State Committee for the ascertaining and investigation of the crimes committed by the German-Fascist invaders and their associates and the damages caused by them to citizens, collective farms, public organizations, state enterprises and institutions, of the U.S.S.R. This Decree declared that for all "The criminal acts committed by German-Fascist invaders and for all the material damage caused by them, the criminal Hitlerite Government, the German Army Command and their accomplices bear full criminal and material responsibility."

Professor Trainin's compact volume argues that the Soviet program for dealing with the war criminals is in fulfillment of the Tripartite Moscow Statement on Atrocities made on October 30, 1943, by President Roosevelt, Prime Minister Churchill and Premier Stalin:

> At the time of granting of any armistice to any government which may be set up in Germany, these German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments which will be erected therein.

He disavows the suggestion, advanced by some in other lands, that Soviet Russia will revert to a policy of isolationism. "The point when governments and peoples live isolated or practically isolated from all others is long past," he says, "Especially the capitalistic system developed and complicated relations between individual nations. A steady international association has developed. Despite the conflicting interests of various nations, despite the difference in patterns of the political systems of countries, this international association forms innumerable threads connecting peoples and countries and represents, in fact, a great economic, political and culturally valuable unit." (Page 30)

He distinguishes between national or domestic law and international law, and defines international crime as infringements of the principles of international intercourse, offenses against association between countries, between peoples. Thus he views an international crime as directed toward the deterioration, the hampering, and the disruption, of international relations. To illustrate: The perpetrators of such crimes as delaying the movement of trains, ships, people and freight circulating between nations try to create obstacles and to play one country against another, one people against another. Such are the substantive characteristics of international crimes as he sees them. From this he maintains that international relations are the sphere of *interstate* relations. The *state* is thus a party to the crime from the point of view of international law, because international law is a source of rights and obligations of a *state*.

Professor Trainin states as questions his concept of the international law applicable to international criminals. Does international law, as he defines it, offer the possibility of the conclusion that in such cases individual persons who were not parties to the conclusion of international treaties and have not acquired rights and obligations in consequence of such conventions, are always irresponsible, without regard to their relations to these conventions? Have these persons consequently the right to hinder the fulfillment of the treaties concluded by the State? Can they, without liability to punishment, infringe upon the highest interests protected by these treaties? Can they commit these crimes because they possess a criminal immunity due to the circumstances that the *state* and not they are parties to the treaty? (Page 76)

The author cites a series of illustrations to the effect that under the present international law, individual persons can commit a serious or atrocious crime affecting international relations, yet no national or municipal laws in many countries make any provision to mete out proper punishment to these international criminals.

Like his Russian contemporary, Academician Eyvgeni Korovin and other Soviet jurists, Professor Trainin makes bold to state that a passion for "legality," "cautious investigation" and "leniency" toward the war criminals would bring us perilously near to allowing many thousands of systematically brutal Nazis to go unpunished for their heinous war crimes. Soviet publicists, of whom he is one of the chief spokesmen, have repeatedly charged neutral countries with harboring Nazi war criminals. They also have challenged the inadequacy of extradition laws of the United States, Great Britain, and many other countries. They contend that these inadequacies have been one of the deterrent factors in establishing an adequate system of tribunals to try, convict and punish the war criminals.

To be sure, the Soviet Government is not a signatory to the Geneva Convention of July 27, 1929, relative to treatment of prisoners of war, although Russia is a signatory to the Hague Convention of October 18, 1907, relating to the laws and customs of war on land. Professor Trainin analyzes the provisions of these conventions and concludes that to date there is no international agreement of any sort which makes adequate provision for the punishment of perpetrators of international crimes, especially the Axis malefactors. So he suggests that an international pact should be consummated at the earliest possible moment which would make it obligatory for governments to enact or to strengthen, as the case may be, national extradition laws affecting international war criminals. He argues that the existing extradition treaties and laws do not assure effective suppression of international crimes which present a menacing danger. Con-

versely, he thinks that the national laws now in effect are, if anything, obstacles to the extradition of such criminals. (Page 101)

Accordingly, he submits the following classifications of international crimes which he thinks could and should be codified at once:

First group: Crimes against peaceful relations between Nations:

1. Acts of aggression
2. Propaganda of aggression
3. Conclusion of agreements with aggressive aims
4. Violation of treaties which serve the cause of peace
5. Provocation designed to disrupt peaceful relations between countries
6. Terrorism
7. Support of armed bands ("fifth column")

Second group: Crimes connected with war—(Posiagatelstva)

For a systematic examination of the war crimes of the Hitlerites, their crimes should be divided into the following four basic groups:

1. Crimes against prisoners of war and against sick and wounded soldiers
2. Crimes against peaceful citizens: (a) Murder and violence, (b) Instituting of a slave-labor regime and taking "into captivity," (c) Pillage
3. Destruction of cities and other inhabited places
4. Destruction and demolition of cultural treasures (Page 45)

Further analyzing existing international agreements such as the Hague Convention of 1907 and the Geneva Convention of 1929, the author maintains that it is *now* not only juridically possible but obligatory to make those who violate the laws and customs of war answerable before the law.

Of particular significance is the fact that this exposition was published under the editorship of Andrei Y. Vyshinsky, former prosecutor of the U.S.S.R. and at present Vice Commissar for Foreign Affairs. It thus may not be far wrong to assume that the desirable treatment of war criminals as envisaged by the Soviet Government does not depart widely from the hypothesis expounded by Professor Trainin.

Professor Trainin is precise in his projected punishment to be meted out to German financial and industrial magnates, whom he holds likewise responsible for the criminal acts attributed generally to the Nazi leaders. He points out the infamous deal made in Cologne on January 4, 1933, between Adolf Hitler and German "captains of industry", whereby the interests of the Rhineland industrialists and those of the Nazi regime, as well as their political ideas, became inseparable, and the fact that at this fateful meeting, finance was represented by Heinrich von Stein, industry by Baron Kurt von Schroeder and Alfred Krupp, Junkers by Count von Alvansleben, and the military by Franz von Papen. He adds that undoubtedly Fritz Thyssen had his representatives there.

If Professor Trainin's thesis declares official policy, the Soviets propose to deal separately with those German capitalists who have profited directly from the war loot. According to his view, the criminal responsibility must include also those *private* persons who, without belonging to the German Army or the Nazi Party or occupying official posts, are in fact guilty of exploiting slave labor and of buying up property illegally confiscated from the people of occupied lands, carried away from those areas, and absorbed at a vast profit by the owners of German cartels and favored monopolies.

Similarly, he urges that all perpetrators of individual criminal acts, such as those of the German soldiers, officers, police and SS men, who acted as murderers as well as incendiaries and ravishers, should be punished regardless of whether they acted of their own initiative or on orders given to them.

The thesis propounded by Professor Trainin has been declared as basis for action by the Soviet Government, regardless of the course taken by the British Foreign Office and the American Department of State. People's Commissar for Foreign Affairs Vycheslav M. Molotov sent a note on April 27, 1942, to the Ambassadors and Ministers of all countries with which the U.S.S.R. then maintained diplomatic relations, concerning the monstrous crimes, atrocities and acts of violence perpetrated by the German-fascist invaders in the occupied Soviet areas and the responsibility of the German Government and military command for these crimes. Likewise, on July 29, 1943, the Soviet Government addressed a note to the Governments of Turkey and Sweden, notifying them to the effect that "the Soviet Government considers it necessary to state that it will consider the granting of refuge, aid or assistance to such persons (Hitlerite war criminals) as a violation of the principles for which the United Nations are fighting, and which they are resolved to achieve by all means at their disposal." Much has transpired since this authoritative book was written, and much more will transpire before this review is read; but the significance of Professor Trainin's exposition is not likely to be changed. The difficulties which the average lawyer would encounter in obtaining a copy has seemed to warrant this extended review.

CHARLES PRINCE

Washington, D. C.

"ELIZABETH IS MISSING": *Or, Truth Triumphant: An Eighteenth Century Mystery. By Lillian de la Torre. New York: Alfred A. Knopf. 1945. $3.50. Pages 266, iv, with index.*

Lawyers who like to "set their teeth" in well-told "mysteries" will find diversion in this tale of the famed disappearance and reappearance of Elizabeth Canning from the vicinage of her home in London in 1753. The story is in no respect fictional; on the contrary, it is put together by skilful use of quotations from the many documents, pamphlets, etc., which chronicled or argued the facts of that celebrated episode, left unsolved by Dr. Sam Johnson despite his amazing solutions of historical mysteries such as the disappearance of the Great Seal and the identity of the Douglas claimant.

Both the author and her husband, who is a professor at Colorado College, are specialists in the history

of England in the eighteenth century, and particularly of picaresque London—the metropolis of bawds and turnkeys, gypsies and Bow Street runners, cord-wainers and hartshorn raspers. She has written an entertaining narrative, has analyzed the controversial evidence admirably, has given the pros and cons of the conflicting theories of the case, and finally has rationalized her own solution of what befell the unpretentious "Bet", about whom violent disputes raged until she was deported to America for "wilful and corrupt perjury". She lived, was married and died, near Hartford, Connecticut, where some of her descendants still reside. The publisher has given unusually attractive typography, format and illustration.

The delineation of London life and the administration of criminal justice in 1753 is absorbing. This was the year in which the *Gentleman's Magazine* smugly said to its London readers in language which reminds of the ageless character of men's hopeful striving for international amity, that "If we recollect the transactions of the year past so far as they regard the political system of Europe, it will appear that they have tended chiefly to the establishment of peace, the improvement of trade, the cultivation of arts, and the establishment of mutual harmony among the several powers."

SAFEGUARDING CIVIL LIBERTY TODAY. *By Carl L. Becker and others. Ithaca, New York: Cornell University Press. April 26, 1945. $2.00. Pages x, 158.*

At a time when some of the restrictions imposed in wartime are being released and there is a discernible recurrence of references to justice and to the dignity and rights of individuals, there should be widespread interest in this forthright volume, which deals with the question whether the freedoms supposedly vouchsafed by American bills of rights are currently much more than "safeguards for the marginal and eccentric part of our citizenship."

In concluding his discussion of "Political Freedom: American Style", the late Carl L. Becker, Professor of History at Cornell University, reminded of Benjamin Franklin's reply in 1787 to a certain Mrs. Powell in Philadelphia, who asked whether a republic or a monarchy had resulted from the labors of the Constitutional Convention, "A republic, *if you can keep it*", said Franklin. The United States has thus far kept its republican form of government, and seems likely to go on doing so; and its cherished freedoms are not beyond reach of rescue from insidious philosophies which have been whittling them away.

The late H. J. Davenport, a distinguished economist, also of the Cornell faculty, once said that law is the only discipline which has a backward outlook on the progress of mankind. Professor Becker urged that an instance of this backward outlook is the assumption that our liberties are secure because they are abstractedly defined and constitutionally guaranteed. The trenchant conclusion from this volume is that a far more vigilant and pragmatic attitude must be developed and insistently maintained, if the generalizations of our bills of rights are to regain and hold vitality for our people as a whole.

"The record of the service rendered to the cause of civil liberties by American lawyers is a very long and honorable one", declares Professor Cushman. The committees and work of the American Bar Association and of nearly all of the state Associations are commended as "patriotic service of the highest order." He emphasizes that "a heavy responsibility rests upon the members of the American Bar, not only to aid in individual cases in the legal protection of civil liberties, but to lead public opinion toward a sound and just appraisal of their vast importance."

JAPANESE MILITARISM. *By John M. Maki. New York: Alfred A. Knopf. May, 1945. $3.00. Pages 258.*

"The war against Japan is a war against people and a war against ideas," declares the American-born Japanese who wrote this trenchant volume. "The United Nations are winning the war against people, but they have yet to give convincing evidence that they are attacking the ideas that have made Japan dangerous."

The author was formerly an instructor in the University of Washington in the State of his birth, and is now engaged in war work for the government of the United States. From his knowledge of his race, he confirms the widely-held conviction that both the war against Japan and the subsequent steps to assure a lasting peace in the Far East must be prosecuted with a frank realization that the whole Japanese people, not a military clique, have first to be conquered or killed. "Japanese militarism is not the Japanese Army and Navy," says Mr. Maki. "It is not a few generals and admirals. It is not the willingness to die for the emperor. It is not the plots of a few evil men. These are only its surface manifestations. It is really a way of life and a set of attitudes held by the Japanese, not because they are born with them but because they have inherited them from centuries of Japanese historical development. Modern Japanese militarism is the product of a combination of age-old social, political and economic factors."

He warns against American acceptance of any claim that the masses of the Japanese people were led into war against their will. "Although it was to the advantage of the militarists to gamble Japan's future in the greatest military venture the country has ever undertaken," he says, "it would be a grave mistake to assume that they had forced an unwilling people in a war, against their wishes. Tradition, history, the success in war, chauvinism, insularity, Japanese belief in Japanese propaganda, and 'thought control' . . . created attitudes in the Japanese out of which arose the ambitions of the militarists and which led to an acceptance of those ambitions by the masses of the people."

Mr. Maki urges strongly that the preoccupation of Americans with

events in Europe and the Near East should not be permitted to leave the Nation's leadership unprepared to cope immediately and drastically with the vast problems which will confront us when V-J day brings a shattered Japan to unconditioned surrender at arms. His book offers suggestions for statesmen to consider without delay, in planning for that eventuality. "If we could carry the war against people to its logical conclusion and kill 72,000,000 Japanese, we should not have to worry about the winning of the war of ideas. Modern weapons have not yet reached the point where they can annihilate a nation; we must accept the fact that there will be a good many million Japanese still living when this war comes to an end. The war of ideas involves these people. If we can shatter their indoctrination by means of a crushing military defeat and provide a new ideological basis for their political and economic structures, we shall prepare them to return to the society of nations as well as protect ourselves against the outbreak of another war in the Pacific."

These excerpts from an earnest book tell its pith and substance better than summary or comment could do. With the war now centered on Japan and its outcome under present alignments in no doubt, the admonitions and suggestions in this volume may best be pondered.

DEMOCRACY IN AMERICA. *By Alexis de Tocqueville. Edited by Phillips Bradley. Foreword by Harold J. Laski. 1945. New York: Alfred A. Knopf. ($6.00) Vol. I, pages v-cxii, 434; Vol. II, pages v-xiii, 401.*

One May morning in 1831 two young Frenchmen disembarked at the foot of Manhattan. Before they sailed for France six months later they had traveled more than seven thousand miles and had touched most of the present states east of the Mississippi.[1] Their official mission was to study the American prison system and on this they filed a comprehensive report. Their principal purpose, however, was to study the working of democracy in the United States.

Both Alexis Charles Henri Clerel de Tocqueville and Gustave de Beaumont were young French noblemen with liberal interests. One of Tocqueville's grandfathers, a marquis of the *ancien regime*, and an aunt had been guillotined during the Revolution. His father returned to public life after the fall of Napoleon and for his services to the Bourbon government was elevated to the peerage.

After completing his study of law Tocqueville was appointed to a minor post in the judicial department. Only twenty-five when the Bourbon dynasty fell in the July Revolution of 1830, Tocqueville with some misgivings took the oath of allegiance to the government of Louis Philippe. Although he remained loyal to his duties as a judicial officer he was not in sympathy with the new government and welcomed the opportunity to make the visit to the United States which for sometime he had contemplated.

Tocqueville's desire was to observe democracy in action in a country that had never had an aristocracy. He himself has been described as an aristocrat who accepted defeat. Professor Laski in his foreword characterizes him as "only half a liberal, and obviously uneasy about democracy."

It is true that Tocqueville never entirely deserted the values of the aristocratic tradition, but he was early imbued with liberal ideas and that faith he never recanted. In a letter to a friend he himself described his purpose in writing *Democracy* as being "to diminish the ardor of the republican party and, without disheartening them, to point out their only wise course . . . to abate the claims of the aristocrats and to make them bend to an irresistible future, so that . . . society may march on peaceably towards the fulfillment of its destiny."

This is not the testament of an aristocrat merely accepting defeat nor is his suggestion "that after all it may be God's will to spread a moderate amount of happiness over all men, instead of heaping a large sum upon a few by allowing only a small minority to approach perfection."

Tocqueville's purpose was to demonstrate to his countrymen living in a time of crisis how and to what extent democracy was applicable to Europe and especially to France. Not only in this did he brilliantly succeed but he produced what a commentator on American institutions as competent as James Bryce has called "one of the treatises on the philosophy of politics which has risen to the rank of a classic" and which Woodrow Wilson found in philosophic insight superior to the work of Bryce himself. Professor Laski is right in calling *Democracy* "one of the seminal sociological works of the nineteenth century" and many will agree when he adds that "it is, perhaps, the greatest work ever written on one country by the citizen of another."

The present edition is singularly timely. First published in this country one hundred and seven years ago there have been numerous reissues, but none within the last thirty years and the work was out of print and difficult to obtain.

In performing his work Professor Bradley has observed the highest traditions of American scholarship. The translation[2] not only reflects the structure but the clarity and luminosity of Tocqueville's beautiful French prose. Indeed, so attractively and persuasively did Tocqueville present his every argument that one must constantly be on one's guard against reading him uncritically.

Professor Bradley's introductory essay is a noteworthy contribution to the literature of the subject. In it he gives a brief biography of Tocqueville and the history of his work through the century that has elapsed since its first publication. His own evaluation he places against a present

1. All except Maine, New Hampshire, Vermont, Illinois and Indiana.

2. The translation is based on that of Francis Bowen in 1862 but many passages have been retranslated. In text, footnotes and appendices all alterations have been eliminated and all omissions restored.

day background.[3]

This excellent edition appears when democracy triumphant has an unparalleled opportunity to demonstrate its value and a correlative need to recognize its shortcomings. Curiously enough, in the opinion of this reviewer at least, time has reversed the values of the parts of *Democracy*.

The first part may be said to deal with the changing body of democracy, the second with its immutable soul. In medical parlance the first was a case history, a diagnosis and a prognosis. It described the American system and institutions and attempted to forecast our political future. In the main the descriptions were unerringly accurate although Tocqueville fell into the error of stating that when a law was declared unconstitutional it was not rendered nugatory, but that its destruction could "only be accomplished by reiterated attacks of judicial functionaries."

So well were the facts marshalled, so logical were the inductions that the conclusions seemed inevitable. It was the first part therefore that was acclaimed not only by the reviewers of Tocqueville's day, but strangely enough by many of those who have dealt with the present edition. Their enthusiasm for the second part which deals with abstract but eternal philosophic truths has been more moderate.

Nonetheless it is the second rather than the first part that has stood the test of time. Nor is this surprising. When Tocqueville wrote twenty-four states comprised the Union; only four decades had passed since the adoption of the Constitution; the seed of nationalism was only beginning to germinate; slavery and the economic system bottomed on it were powerful divisive forces; our continental position moated by two oceans seemed impregnable to all attack; the mapped red line that marked the last frontier was not to disappear for half a century and free land was to be had for the asking.

Under these conditions it seemed hardly debatable that then and for the predictable future the first loyalty of Americans was to the states and not to the Union, that the national government was losing power, that the states could easily withdraw from the Union, that we had no concern with foreign affairs and that the executive was weak and subordinate to Congress.

So long as their bases were static Tocqueville's prophecies were fulfilled. To us they seem strange because of the difficulty we have in realizing how dynamic have been the changes that have come not only to this country but to the world during the last century.

No doubt the character of a people is also impermanent, but its metamorphosis is evolutionary and so, since fundamentally we have changed but little since Tocqueville sailed, most of what he wrote in the second part remains true today. Our manners have improved but little; the master-servant relationship is still that of a democracy; at the beginning of a war we are weak and at its close strong; our idea of the family falls within our tradition; our code is unaltered; our boast is of mass production—frequently of gadgets often unnecessary, shoddy and ephemeral; the tyranny of the majority remains a reality; "virtuous materialism" still entices our ablest men to the pursuit of wealth and keeps them away from public life.

Even within these precincts some think they sense the rumble of a distant drum. The power of the tax collector may be so great as to divert the energies of ambitious men from the pursuit of Tantalean wealth to public service whose intangible rewards do not lift their incomes into the abhorred brackets.

Of the Bar Tocqueville said:

> The profession of the law is the only aristocratic element that can be amalgamated without violence with the natural elements of democracy and be advantageously and permanently combined with them. I am not ignorant of the defects inherent in the character of this body of men; but without this admixture of lawyer-like sobriety with the democratic principle, I question whether democratic institutions could long be maintained; and I cannot believe that a republic could hope to exist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people. (Vol. I, p. 276)

What now?

Professor Maguire of Harvard has wisely included *Democracy* in his recently compiled[4] list of "must" books for law students. I venture to add that the seasoned practitioner has missed something if it has escaped him and, even if it has not, has much to gain by rereading it. In dealing with this country of ours Tocqueville's perspicuity and perspicacity are unrivalled. And if his vatic gift is not infallible

> "None can pierce the vast black veil uncertain,
> Because there is no light behind the curtain."

WALTER P. ARMSTRONG
Memphis, Tenn.

FROM DEMOCRACY TO NAZISM: *A Regional Case Study on Political Parties in Germany. By Rudolph Heberle. Baton Rouge: Louisiana State University Press. June 1, 1945. $2.50. Pages ix, 130.*

The author is a native of the City of Luebeck, in Germany. He studied and wrote in the United States as well as in Germany, and taught sociology at the University of Kiel. He became Professor of Sociology at Louisiana State University in 1938.

His present volume deals primarily with those organized groups and unorganized social collectivities in which political ideas became effective during the rise of the Nazi regime. He does not undertake to uncover the sources or motivations of the National Socialist ideology in past political thought, but endeavors to analyze the extent to which, as an anomalous phenomenon, it may, in the world of tomorrow, be to some extent overcome by forces more in keeping with the traditions of lib-

3. There are two bibliographies, one listing all editions of *Democracy* in various languages, and one books and articles relating to it.

4. The New York Times, March 23, 1945.

(Continued on page 380)

Practising lawyer's guide to the current LAW MAGAZINES

ADMINISTRATIVE LAW—*"Price and Rent Control Problems—the Practitioner's Approach":* In the text of the article under the above-quoted title in the April issue of *The Federal Bar Journal* (Volume VI—No. 3; pages 253-263), there is an obvious effort to carry out the suggestion, repeatedly made in this department, that the expositions in the law review should reflect the practitioner's approach and endeavor to meet his day-by-day needs in his work, and that this can and should be done even when the article is contributed by a member of the staff of an administrative agency. True, as might be expected in a law magazine which labels itself as "an authoritative guide to the operations of the Federal Government", the current article is written by the General Counsel for the OPA, Richard H. Field; but he has fulfilled competently and fairly the implications of the title which he took for his contribution. At all stages he bears in mind "the practitioner's approach"; and if he does not put himself completely in the place and the state of mind of the average lawyer who has to represent a client in proceedings under the Emergency Price Control Act, he does give the informative angles which that lawyer ought to have and keep in mind. Despite the difficulties of the pioneering tasks which confront his own daily work, Mr. Field has set an admirable example for all government officers and employees who might otherwise be disposed to use the pages of the law reviews to give a roseate picture of the work of their agency, rather than to help the lawyer and his client who come before it. (Address: The Federal Bar Journal, No. 10 Park Avenue, New York 16, N. Y.; price for a single copy: 75 cents).

ADMINISTRATIVE LAW—*Public Utility Rate Regulation:* An objective analysis of recent Supreme Court decisions reviewing rate orders of the Federal Power Commission is presented by William H. Anderson, an attorney who is a member of the Economics Department, University of Wisconsin, in the February issue of the *Journal of Law & Public Utility Economics* (Vol. XXI—No. 1; pages 12-22). Writing under the title "The Supreme Court and Recent Public Utility Valuation Theory," Mr. Anderson concludes that under the decision in *Federal Power Commission* v. *Hope Natural Gas Company,* 320 U. S. 591 (1944), rate regulation has entered the "administrative phase" as compared with the early "legislative phase" and the later "judicial phase." The article gives a succinct survey of the leading cases, and makes a careful appraisal of the essential points decided in the *Hope* case. (Address: Journal of Law & Public Utility Economics, Sterling Hall, University of Wisconsin, Madison 7, Wis.; price for a single copy: $1.50.)

ATTORNEY AND CLIENT—*Federal Legislation and Regulations—"Restrictions on Activities of Personnel During and After Government Service":* With about three million civilian employees on the roster of the Civil Service Commission (and many more outside the Civil Service) and about twelve million men and women in the Armed Forces, the large number of these who are lawyers will be keenly interested in the restrictions imposed on their private professional and business activities after they leave the service of their country. The details of these proscriptions become particularly important at a time when many men and women are being mustered out of the Armed Forces, and a large reduction in the number of bureaucratic employees will follow the retrenchment and reorganization policies advocated by President Truman. The scope and text of these restrictions have been admirably assembled from their many scattered and obscure repositories by Lieutenant-Colonel Leonard Wheeler, Jr., of the Boston Bar, in the April number of *The Federal Bar Journal* (Vol. VI—No. 3; pages 333-353). The needed information is clearly and compactly given, for those engaging in private business as well as in the professions. The author quotes copiously from the statutes and regulations, generally in lieu of stating his own opinion as to their effect; but this is hardly a criticism of his technic, in view of their complexities, ambiguities and uncertainties, which lead him to urge strongly the need for the earliest possible clarification and codification. This article is one which will save

Editor's Note:

Members of the Association who wish to obtain any article referred to should make a prompt request to the address given with remittance of the price stated. If copies are unobtainable from the publisher, the JOURNAL *will endeavor to supply, at a price to cover the cost plus handling and postage, a planograph or other copy of a current article.*

much time and annoyance (or worse) if it is kept in every law office for ready reference, as to what lawyers and business men may do and may not do, after leaving the government service or the Armed Forces. (Address: The Federal Bar Journal, No. 10 Park Avenue, New York 16, N. Y.; price for a single copy: 75 cents).

CONTRACTS—*"Mistake as to Party in the Law of Contract":* An interesting discussion of the distinction in law between "mistake of identity" and "mistake of attribute" under the rule that mistake as to the identity of a party to a contract generally voids the contract, is in the April issue of *The Canadian Bar Review* (Vol. XXIII—No. 4; pages 271-292). The author, Glanville L. Williams, of St. John's College, Cambridge, England, points out that error of personal attribute can be reduced verbally to error of person; and he draws the conclusion from the decided cases that the "mistake of identity," which will avoid a contract, consists in confusing the attribute or attributes of two or more persons of whose existence the confused or defrauded party has independent evidence or knowledge. A second instalment of the article, to appear in the May issue, will discuss whether, in order to render a contract void for mistake of identity, the identity of the other party must be material, and the analogous problems that arise in cases of agency. (Address: The Canadian Bar Review, Ottawa Electric Building, Ottawa, Ontario, Canada; price for a single copy of either issue: 75 cents.)

CRIMINAL LAW AND PROCEDURE—*"New Rules of Criminal Procedure—A Suggestion":* Professor Charles S. Potts, Dean of the Southern Methodist University School of Law, in an article in the April issue of the *Texas Law Review* (Vol. XXIII—No. 3; pages 215-227), suggests a re-study and revision of the rules governing criminal procedure in Texas, in line with the recent movement to improve and simplify the procedural rules of our state and federal courts. In particular, Professor Potts urges the need for closer regulation of bail-bond rates and collections, the elimination of unnecessary expenses in connection with the arrest and transport of prisoners and in summoning jurors and witnesses, and further simplification of forms of indictments. He also advocates changes which would permit the granting of suspended sentences in all misdemeanor cases in the court's discretion, the waiver of jury trial by the defendant in all non-capital cases, whether he pleads guilty or not, and the waiver of grand jury indictment by the defendant and proceeding by information in felony cases. (Address: Texas Law Review, Austin, Texas; price for a single copy: $1.00.)

DOMESTIC RELATIONS—*Conflict of Laws—"Bases of Divorce Jurisdiction":* In the March-April issue of the *Illinois Law Review* (Vol. XXXIX—No. 4; pages 343-366), Karl M. Rodman, Attorney, United States Department of Labor, analyzes the principal bases of jurisdiction in divorce in the English-speaking and Continental countries, and the causes giving rise to conflicts of jurisdiction in this field. The author reviews at length the Anglo-American notion of domicil and the concept of nationality which is accepted as the bases of divorce jurisdiction in most European states. In addition, reference is made to residence and the non-judicial bases of jurisdiction involved in legislative, executive and ecclesiastical forms of divorce. (Address: Illinois Law Review, 357 East Chicago Avenue, Chicago, Ill.; price for a single copy: $1.00.)

ESTATES — *Probate Courts — Administration of Veterans' Estates — World War Veterans Act as Amended — "Should Bureaus Be Substituted for Our Probate Courts?":* Last November this department noted a discussion of the above-quoted subject, contributed to the *Mississippi Law Journal* (Vol. XVI—No. 3) by Gibson B. Witherspoon, of the Bar of that State (30 A.B.A.J. 533). Edward E. Odom, Solicitor for the Veterans' Administration, replied in detail to Mr. Witherspoon's contentions, in a letter which he sent to Congressman John E. Rankin, of Mississippi, on April 21. The House Committee on World War Veterans' Legislation has caused Mr. Odom's reply to be printed, as its Document No. 59. Mr. Odom has asked this department to refer to the fact that there has been such an answer and to its availability. In the course of his reply, Mr. Odom said: "The record of the American Bar Association, and of the Conference of Commissioners on Uniform State Laws, is one of unselfish service and patriotic intent in the welfare of incompetent veterans and dependents of veterans. Under their leadership the Uniform Veterans' Guardianship Act, in whole or in principle, has been enacted in practically every State of the Union, and in Puerto Rico and the Commonwealth of the Philippines. Within the last two years they have similarly led in bringing such beneficial legislation up to date. I doubt, therefore, that the Association would approve the views expressed in the article." Copies of Document No. 59 may presumably be obtained from the usual sources.

FEDERAL PRACTICE—*"The Summary Contempt Power and the Federal Courts":* An editorial note entitled as above in the April issue of *The George Washington Law Review* (Vol. 13—No. 3; pages 356-371) by Robert H. Reiter of its Board of Student Editors, comprehensively treats of that "anomaly in our judicial system," the summary contempt power of courts. With extensive citation of authorities, the note suggests the nature of the contempt power, sketches its development in the federal judiciary, and attempts to clarify a few of the outstanding problems presented by the use of the contempt power in the federal courts. A section of the note dealing with

contempt by publication, "one particularly argumentative application of the contempt power," traces comparatively recent developments in that field, including the substitution by the Supreme Court of the United States in *Bridges* v. *California* (314 U. S. 252) of the "clear-and-present-danger" test of *Schenck* case fame, for the "reasonable-tendency-to-obstruct-the-administration-of-justice" rule of the *Toledo Newspaper Company* case (247 U. S. 402). (Address: The George Washington Law Review, George Washington University, Washington, D. C.; price for a single copy: $1.00).

JURISPRUDENCE – *"Law and Morals–Jurisprudence and Ethics":* Dean Roscoe Pound contributes as the leading article in the April issue of the *North Carolina Law Review* (Vol. 23–No. 3; pages 185-222) a rewriting of one of his famous lectures on jurisprudence, in which he examines the age-old philosophical problem of the relationships between law and morals. It is noted that the article is to be used in a book on jurisprudence which may be expected to be Dean Pound's own and final *"Summa."* In this revision he gives not only a masterful review of the approach of the various schools of jurisprudence, beginning with the philosophical jurists of the Seventeenth Century, but also an application of the shifting doctrines of the impact of ethics on jurisprudence and particular problems of every-day law. (Address: North Carolina Law Review, Chapel Hill, N. C.; price for a single copy: 80 cents).

LEGAL EDUCATION – *"Post-War Plans for Law Schools:"* Further evidence of the increasing concern over trends in legal education during the post-war era is in the April issue of the *Boston University Law Review* (Vol. XXV–No. 2), which is devoted principally to addresses delivered at a conference under the auspices of the Boston University School of Law in April, on problems of legal education in particular and the legal profession in general. Representatives of the judiciary, the bar, the law schools, the boards of bar examiners, and the bar associations of New England, participated. The symposium was contributed to Daniel L. Marsh, President of Boston University, Mayo A. Shattuck, past president of the Massachusetts Bar Association and a member of the Massachusetts Board of Examiners, S. Kenneth Skolfield, Dean of the Northeastern University School of Law, Elwood H. Hettrick, Dean of the Boston University School of Law, and Arthur T. Vanderbilt, former President of the American Bar Association and Dean of New York University School of Law. (Address: Boston University Law Review, 11 Ashburton Place, Boston, Mass.; price for a single copy: 70 cents.)

PROCEDURE–*Merger of Law and Equity–"A Century of the New Equity":* The merger of law and equity into the functioning of a single court has become so settled in most jurisdictions and has been hailed so widely as a desirable procedural reform, that a frank challenge of the results of the change makes interesting reading. In the April issue of the *Texas Law Review* (Vol. XXIII–No. 3; pages 244-256) Leonard J. Emmerglick, of the New Jersey Bar, now a special assistant to the Attorney General of the United States, raises pertinent questions concerning the desirability of a system which no longer maintains a specialized equity court. His thesis is that "the unified procedure has not attained the preoccupation with conscience which was responsible for the process by which morals formerly were converted into rules of law". (Address: Texas Law Review, Austin, Texas; price for a single copy: $1.00).

SELECTIVE SERVICE ACT–COURTS–*"Judicial Investigation of Selective Service Action":* How the Courts have dealt with "the perplexing problem of reconciling basic principles of justice with military needs in wartime" in cases involving the administration of the Selective Service laws is described in an informative and useful article by James Thomas Connor and Bert William Clarke in the March issue of the *Tulane Law Review* (Vol. XIX–No. 3; pages 344-373). The authors are lawyers in military service connected with the Louisiana Selective Service System, Major Connor as Legal Advisor and Lieutenant (j.g.) Clarke as Navy Liaison Officer. They point out that although the war powers of Congress are plenary and unlimited, the Selective Service Act was enacted to provide a "fair and just system of selective compulsory military training and service" under which the courts may and do inquire into the legality of the induction process in defined circumstances. They conclude that such investigations are properly limited to *habeas corpus* proceedings testing, in terms of jurisdiction, the restraint of persons who have complied with the Act, and that analogies to the concept of judicial review of actions of administrative agencies, with consequent emphasis on the review of "questions of law" but not of "fact," find little support on careful analysis. (Address: Tulane Law Review Association, The Tulane University of Louisiana, New Orleans 15, La.; price for a single copy: $1.00.)

TAXATION–*Administration–"Some Iconoclastic Reflections on Tax Administration":* In the April issue of the *Harvard Law Review* (Vol. LVIII–No. 4; pages 477-547) an article under the above-quoted title, by Louis Eisenstein, attorney in the office of the Tax Legislative Counsel, Treasury Department, suggests with respect to Federal tax administration "a new framework of reference with new attitudes and approaches." His thesis is that a fairer and more satisfactory administration of federal taxes can be accomplished by granting to the Treasury more power and a greater freedom, to the end that it be recognized as a rule-making authority with almost com-

plete finality accorded to its decisions.

The article refers to the "glaring inadequacies of the administrative process" and again to the fact that "a distinctive characteristic of present-day tax administration is an almost zealous abstinence from the formulation of [an informed] administrative policy".

The idea of reposing even greater authority in an ineffective administration may at first seem inconsistent. Mr. Eisenstein, however, believes that the present administrative paralysis is attributable not only to "a power of self-suggestion, but more fundamentally to a variety of interlocking factors, such as the concept of specific legislative intention, the virtual delegation of administrative power to the courts, and an awkward system of appellate review which is conducive to confusion rather than administration".

The author questions the effectiveness or competence of the courts to handle the problems of taxation. He prefers the technical competence of Treasury experts to the "frailties of the judicial process and its techniques". Even the Tax Court of the United States is described as "completely saturated with the weaknesses and vagaries of the judicial process" and "an improvised substitute for the Treasury when the latter fails to perform its administrative tasks". Mr. Eisenstein considers that it is doubtful that a proposed special appellate tax court would be sufficiently aware of the daily administrative implications or the wholesale effect of a particular rule. He does state, however, that such a court would be an excellent agency for passing upon the reasonableness of Treasury interpretations.

Although the author warns in advance that the article makes no pretense at being definitive, one is left with a lively interest in the unanswered questions of how the metamorphosis would be implemented and whether the Treasury staff of experts under such a program would be confined entirely to career men with long experience in tax matters. (Address: Harvard Law Review, Gannett House, Cambridge, Mass.; price for a single copy: 75 cents.)

TAXATION—*"Modern Bilateral Conventions for the Prevention of International Double Taxation and Fiscal Evasion:"* From the League of Nations still functioning at Geneva comes belatedly as of May 1, 1945, this monograph embodying the discussions and recommendations at the regional tax conference held in Mexico City in July of 1943. The vital expansion of economic intercourse among the Nations after World War II requires most urgently that confiscatory and discriminatory taxation of foreign business and investment, and all forms of international double taxation, shall be eliminated. Recommendations to this end are likely to be a prime function of the Economic and Social Council to be created by the United Nations Organization. The League of Nations has been at work on fiscal problems since 1921, with the United States taking part since the early thirties; and a fairly complete network of treaties for avoidance of double taxation and fiscal evasion was in the making, particularly in Europe, before World War II.

In Mexico City nearly two years ago, the results of the work of the League experts were codified in the form of three coordinated model conventions covering the various aspects of international tax relations. These model conventions are contained in the report now published by the League of Nations; they are destined to serve as a basis in negotiations between national tax authorities. They proceed from the fundamental conception that a balance has to exist between the taxing rights of the country where a taxpayer resides and of the country where his property or the source of his income is situated. The recommendations made concerning the suppression of fiscal evasion should prove of value for the development of international trade, not only because they render more acceptable to national treasuries the sacrifices involved in the elimination of double taxation, but also because they discourage unsound financial transfers. The model conventions are accompanied by a commentary which explains the economic, financial, legal, accounting and administrative considerations that underlie their provisions, and the manner in which their clauses can be adapted to individual national tax legislations, so as to facilitate the conclusion of tax treaties. (Address: Columbia University Press, 4960 Broadway, New York City; price for a single copy of League of Nations Publication, 1945: II.A. 3.—paper-bound: 75 cents.)

TRUSTS—*Construction and Validity of Trusts for Charitable Uses—"Trusts for Charitable and Benevolent Purposes":* A well-written and penetrating contribution by Professor Austin G. Scott of the Harvard Law School in the April issue of the *Harvard Law Review* (Vol. LVIII—No. 4) deals with the above subject. Taking as a point of departure a recent decision by the House of Lords that a trust for such "charitable or benevolent object or objects" as the executors should select was void for indefiniteness, Professor Scott reviews the English and American decisions and deplores the tendency of the courts (less marked in the United States than in England) to defeat the settlor's intention for reasons which are technical rather than substantial while purporting to lay stress upon the intention of the settlor. He points out that the use of the word "charitable" alone will usually save the trust while the words "charitable or benevolent" are dangerous; he rightly regards this distinction as absurd. Most settlors, and indeed draftsmen, would regard the terms as synonymous; and in any event it should be easy to find they were intended to be synonymous, if necessary to uphold the trust. The settlor, whatever else he may have intended, certainly did not intend the trust to fail. (Address: Harvard Law Review, Gannett House, Cambridge, Mass.; price for a single copy: 75 cents.)

Tax Notes

Prepared by Committee on Publications, Section of Taxation: Mark H. Johnson, Chairman, New York City, William A. Blakely, Dallas, Texas, Howard O. Colgan and Martin Roeder, New York City, Allen Gartner, Washington, D. C., and Edward P. Madigan, Chicago.

Oil Drilling Costs

The Fifth Circuit, on March 6, handed down its startling opinion in F.H.E. Oil Co. v. Com'r, 147 F. (2d) 1002, stating that drilling costs may never be deducted as a current expense. On May 4, the court retracted this dictum on rehearing of the case. Prompted by thirty *amicus curiae* briefs, the court admitted that its original opinion was too broad, in view of the long history of the regulations, of their implied acceptance by Congress in § 711(b) (1) (I) of the excess profits tax law, and of the billion dollars of income which would be affected.

Nevertheless, the court adhered to its original decision disallowing the deduction on the facts in that case. The rule was reaffirmed that drilling costs incurred by a contractor must be capitalized where he obtains an interest in the property in consideration for his agreement to drill. In the present case, the interest was in "unless" form: the contractor had not agreed to drill, but would have forfeited his interest if he failed to drill. The court held that the result was the same in either case. Moreover, the deduction was denied not only with respect to costs incurred in drilling producing wells, but also with respect to the cost of dry hole drilling.

It seems to have been generally assumed that this opinion recognizes the propriety of the Treasury's rule-making power with respect to drilling costs. This assumption, however, may be too optimistic. The court made the significant statement that the Treasury Regulations could not authorize the deduction of the type of cost incurred in that case. The opinion does not mention the regulations which specifically permit a deduction of part of the cost in such a case for 1943 and subsequent years. But, it may be assumed that the court was cognizant of these regulations, and it may be inferred that the opinion is an advance warning that they will not be recognized.

The Proposal for a Tax Court of Appeals

One of the most vigorously discussed issues in recent years is the reform in tax procedure advocated by Professor Griswold in his recent article. "The Need for a Tax Court of Appeals", 57 Harv. L. Rev. 1153 (October, 1944). In very brief summary, the proposal is made for a new court to hear appeals of federal tax cases, and to eliminate the present jurisdiction of the circuit courts. The prime purpose of this change is to remove an important source of conflict and delay in litigation, and thereby to facilitate the administrative closing of cases which are affected by such conflict and delay.

The proposed plan has met substantial opposition. In an article, "Can Tax Appeals Be Centralized?", Taxes (April, 1945), Mr. Robert N. Miller challenged the conclusion that appellate procedure is responsible for substantial delay, and contended that the proposed reform would entail more evils than it would cure. In an address printed in the Legal Intelligencer (May 14, 1945), Mr. Percy L. Phillips condemned the plan, and advocated instead a list of ten administrative reforms which would largely remedy the procedural difficulties which beset taxpayers and their attorneys.

Whether or not a Tax Court of Appeals is ultimately created, Professor Griswold has earned the gratitude of the legal profession for focusing attention upon the present weaknesses in tax administration. This first concrete proposal for a remedy should induce, from one direction or another, some degree of amelioration in the near future.

Husband-Wife Income—Estate by the Entirety

In a quite surprising development, the Tax Court has recognized a quasi-community status arising from the ownership of property by husband and wife in an "estate by the entirety" under Pennsylvania law. The court has held that one-half of the income from such property is taxable to each spouse, even though one furnished the entire consideration. The rule was applied not only to dividends and mining royalties, but also to income from mining operations conducted by the husband. The decision is based upon the legal concept that the income belongs in its entirety to each spouse. George K. Brennan, 4 T. C. No. 148. Three dissenting judges contended that this "ancient property law" should not be controlling for Federal taxation.

Family Partnerships

An article by Mr. Ballantine in the March, 1945, issue of the JOURNAL complained of the recent tendency of the Supreme Court toward "fragmented" opinions. The Tax Court now appears to be following in the Supreme Court's footsteps. In a group of recent husband-wife partnership cases, the division of income was disallowed in three cases and recognized in one. Carl P. Munter, 5 T.C. No. 6; Camiel Thorrez, 5 T.C. No. 8; Jacob DeKorse, 5 T.C. No. 11; Davis B. Thornton, 5 T.C. No. 13. The variety of opinion among the sixteen judges in these cases is wor-

thy of note. In the first case, there was a special concurrence by three judges, and two separate dissents. In the second, there were two separate concurrences, two dissents without opinion, and three separate dissenting opinions, in two of which another judge concurred. In the third, there was a special concurrence without opinion, two dissents without opinion, and a dissenting opinion by four other judges. In the fourth (the decision for the taxpayer), there was a special concurrence by five judges, and a dissenting opinion by three judges.

Prediction in this subject is now practically impossible.

Junior Bar Notes

by T. Julian Skinner, Jr., SECRETARY, JUNIOR BAR CONFERENCE

The Council of the Junior Bar Conference of the American Bar Association met at the Statler Hotel in Washington, D. C. on June 10, 11, and 12, for its regular mid-year meeting.

Charles S. Rhyne of Washington, D. C., National Chairman of the Conference, presided. He opened the session on June 10 with a general statement relative to the work of the Conference, and reported that an active State Chairman was serving in every state in the nation.

After the Council approved the by-laws as previously revised, with the exception that provision for the Conference to elect one councilman from each Federal Judicial Circuit was retained, the Council proceeded to hear reports from Sidney S. Sachs, editor, and Lt. Charles H. Burton, U.S.N.R., one of the associate editors of *The Young Lawyer*, the Conference's printed publication.

James P. Economos, of Chicago, last retiring chairman of the Conference, reported on Procedural Reform Studies in the absence of John S. Howland of Des Moines, National Director of the Studies. He reported that two-thirds of the studies had been completed and that as soon as the remainder were completed a compilation of the studies would be prepared.

Ray Nyemaster, Jr. of Des Moines, National vice chairman of the Conference, reported in his capacity as chairman of the Membership Committee. He outlined the method which is being pursued of inviting qualified attorneys in the nation to become affiliated with the American Bar Association and pointed out that the Conference's committee on the matter is working directly with the Association's regular committee on membership.

K. Thomas Everngam, of Denton, Maryland, chairman of the Committee in Aid of the Small Litigant, reported that the small loan and justice of the peace surveys are proceeding in due course with the latter about to be completed.

The report of the Committee on the Inter-American Bar Association was made by William R. Eddleman, of Seattle, in the absence of the committee chairman Fred Much, of Houston. Mr. Eddleman stated that valuable contacts had been made with attorneys in the other American countries and that the movement to create a junior bar group in the Inter-American Bar Association is proceeding in a reasonably satisfactory manner.

Chairman Rhyne reported that the Public Information Program, headed by Thomas F. Healey of Washington, D. C., who could not be present, had made real progress. Many radio and other programs of real value are being presented.

At the afternoon session, the Chairman reported for Morris I. Liebman of Chicago, who is chairman of the Committee on Restatement of the Law, and for Milton E. Greenfield, Jr. of St. Louis, chairman of the Committee on Relations with Law Students, who were not able to attend the Council.

Calvin M. Corey of Las Vegas, Nevada, and Washington, D. C. reported as Chairman of the Committee on Traffic Courts. James P. Economos, secretary of the Committee, then pointed out that traffic court conferences consist of discussions of traffic court problems and the solutions thereto; that state and district conferences are now being held to the extent permitted by existing travel restrictions, and that three manuals are being prepared, one relating to traffic court conferences, one for the use of traffic courts, and the third to be used by prosecutors in such courts. Mr. Harvey D. Booth of Chicago, secretary of the Traffic Court Division of the National Safety Council, stated that the Conference and the National Safety Council were jointly accomplishing traffic court reform and that much more would be accomplished.

On the second day, June 11, the members of the Council attended the District of Columbia Traffic Court Conference. Mr. John J. Carmody, President of the Bar Association of the District of Columbia, presided. Honorable Guy Mason, Commissioner, welcomed the group, and Mr. Norman Damon, vice-president of the Automotive Safety Foundation, spoke on the national program for improving traffic courts. A panel discussion followed, led by James P. Economos, on present procedures for handling traffic violations in municipal courts.

At the afternoon session, Mr. Booth led a panel discussion on enforcement problems of traffic courts, which was broadcast over the air. Mr. Richmond B. Keech, corpora-

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It does not end war. There have been 72 wars of greater or less magnitude in the last one hundred years, and there has been a so-called world war once each 23 years for the past three centuries. There will be an end of war when mankind has progressed to the point that inherited tendencies toward violence are controlled either through self-restraint or through restraint imposed by some world government yet to be devised.

It does not provide for collective action against one of the Big Five nations who are members of the organization, even if one of them becomes an aggressor.

It does not repeal the law of conquest. The San Francisco meeting was not a peace conference, although one of the San Francisco newspapers persisted in calling it such. It was a conference to set up a future international organization to provide collective security for its members. When the peace is written, or perhaps I should say dictated, I think we will find that the conquering nations will retain strips of enemy territory, just as the United States will retain such conquered islands as are necessary to our future protection. Being perhaps a little more civilized, or a little more sensitive of the right of self-determination of other peoples, we shall probably retain only infinitesimal bits of territory and such as are suitable for air and naval bases. Some of our allies, seeing no virtue in such self-restraint, will consider it appropriate to retain whole countries or parts of countries, either on the assertion of military or economic necessity or on that other delusion which has caused so much grief to the world, that at some ancient time the newly-acquired territory was part of the fatherland. And such lack of restraint on their part will sow seeds which in due time will mature into causes for another world war, unless education in national self-restraint and national generosity toward lesser nations develops through the organization now projected. Whether the peace which follows this war will be a real peace or merely another long armistice will depend primarily on the will for peace among the people of Russia, Britain and the United States, for I assume this time we will be realistic enough not to furnish our present enemies with the means to re-arm.

What the Charter Does

The Charter does perpetuate the coalition of nations that won the European war. This the League of Nations did not do after World War I.

It establishes an international organization dedicated to the search for peace, with a Security Council functioning continuously, and possessing real powers.

It sets up the goal of peaceful settlement of international disputes, and all member nations agree that they will settle such disputes in such a manner that international peace, security and justice are not endangered.

It establishes an International Court of Justice and all members of the United Nations Organization are *ipso facto* parties to the Court Statute. Nations not parties to the Charter may become parties to the Court Statute upon conditions to be fixed by the Assembly and the Security Council.

It authorizes regional action against a regional aggressor.

It recognizes the necessity of solving world economic problems and has set up a Social and Economic Council as a principal agency. Its function is limited to studying and recommending, but even this is an improvement over the League, which ignored the problem.

It provides for a trusteeship council and states the principle that nations administering territory inhabited by peoples not yet able to stand by themselves in the strenuous modern world accept their role as a trust, and that they will promote the well-being of the dependent people, insure their social, economic and educational advancement, develop appropriate forms of self-government or independence, and encourage respect for human rights and fundamental freedoms without distinction as to race, language, religion or sex.

This respect for human rights is stressed not only in the trusteeship provision but also among the principal purposes of the organization. Living in a nation which has a bill of rights in its fundamental law, we perhaps do not fully realize the limited extent of such rights in other parts of the world. The importance of this concept was urged upon our delegation by the consultants, was accepted, and with that backing was adopted as a goal for future conduct by the other nations.

Conclusion

The aspiration of Woodrow Wilson for a great league of peace was sabotaged in this country both by friends who wanted more, as well as by opponents who wanted less, power in the organization. Whether our membership in the League would have given it sufficient strength and prestige to solve the problems which led to World War II will be debated endlessly and can never be answered. Our responsibility lies in the fact that we made no real effort to assist in the solution of those problems. For that failure we have paid with more than a million casualties and with boundless treasure which had been accumulated by the toil and genius of our people over several generations.

The United Nations set forth as one of their principal objectives the necessity of preventing future wars. To do this, peace must provide a method of settling disputes in lieu of the method of force employed by war. Such a method is provided by the San Francisco Charter. It is based on agreement of the nations that they will seek a solution of all international problems through negotiation, mediation, conciliation, arbitration, or by reference to the World Court.

I believe we should and will join the organization. Some months ago the Senate by a vote of eighty-five to five said we would join with the

other nations to establish such an organization. Whether it succeeds will depend upon the good faith of the major powers and upon the efforts and earnestness of those who are determined that this time it shall work to bring an end to the era of ruthless force and to bring into being in the affairs of the world a reign of law.

In conclusion I wish to stress a thought I mentioned before, that is, in evaluating the Charter we must do so by consideration of its blueprint, the Dumbarton Oaks Proposals. Mr. Evatt, the Foreign Minister of Australia, was perhaps the most outspoken in criticizing the Dumbarton Oaks Proposals and in endeavoring to make changes in them. In one of the closing debates he stated that he recognized that the instrument, as drafted, was a very great improvement over the Dumbarton Oaks Proposals. We must understand that hundreds of proposals were made, some of them official, many of them the private plans of various individuals and groups. When one was accepted, the proponents of all the others were necessarily disappointed.

The proposals of the American Bar Association were not all accepted, and neither were those of any other person, group or nation. Perhaps it is better so.

For international cooperation must enlist many peoples of widely differing interests. It cannot be dictated by one person or by one nation, and we must all learn to accept the best effort of our common endeavor, just as the ancient Greeks accepted the golden mean as the highest good. We are cooperating toward a goal the most important the world has ever striven to attain, an international order based on law, and when that is attained, one of its fruits will be a just and lasting peace.

Notice to Members of Junior Bar Conference

NOTICE is hereby given that at the annual meeting of the Junior Bar Conference to be held in Cincinnati, Ohio, beginning September 9, 1945, there will be elected a chairman, vice chairman, and secretary, each for a term of one year, a member of the Executive Council from each of the First, Third, Fifth, Seventh, and Ninth Federal Judicial Circuits and the District of Columbia, each for a term of two years.

Pursuant to Section 4(B) of Article IV of the By-Laws, notice is hereby given that the members of the Junior Bar Conference residing in the above-named Judicial Circuits (hereinafter referred to as Council Districts) may nominate candidates for the office of member of the Council from their respective districts by written petition, in each case, specifying the name of the person nominated and the office for which nominated, containing the names of at least twenty endorsers, all of whom are residents of the district of the person nominated. The petition can state briefly a biographical sketch of the background and qualifications of the candidate. It shall be submitted to the chairman, Charles S. Rhyne, 730 Jackson Place, N. W., Washington 6, D. C., not later than August 25, 1945. At the first session of the annual meeting the chairman of the Conference shall deliver to the chairman of the Nominating Committee all petitions submitted pursuant to this notice.

The Nominating Committee shall consider the candidates proposed by each of said petitions, as well as receive names of other candidates and report its Council nominees at the same time and place, and in the same manner that it reports the nominations for the officers of the Conference. Other nominations for the Council may be made from the floor following the report of the Nominating Committee, as may other nominations also be made for officers. The election of the Council members shall take place at the same time and place, and in the same manner as the election of officers, immediately following the conclusion of the second general session of the annual meeting, and shall be by written ballot.

TERM OF OFFICE: The term of office of the officers elected at the Cincinnati annual meeting shall begin with the adjournment of the said annual meeting and end with the adjournment of the annual meeting to be held in 1946, or until their successors shall be elected and qualify, and the term of office of the Council members from the First, Third, Fifth, Seventh, and Ninth Federal Judicial Circuits and the District of Columbia shall begin with the adjournment of the 1945 annual meeting and end with the adjournment of the annual meeting to be held in 1947, or until their successors shall be elected and qualify.

ELIGIBILITY: No person shall be elected as an officer or member of the Council if he will, during his term of office, become ineligible for membership in the Conference. The membership of a member of the Conference shall terminate at the conclusion of the annual meeting in the calendar year within which the member attains the age of thirty-six years, or upon his ceasing, prior to that time, to be a member of the American Bar Association. A person elected as a member of the Council shall be, at the time of his nomination, a resident of the Council District for which he is chosen. No person shall be eligible for election as a member of the Executive Council if he is then a member of the Council and has been such a member for a period of three years or more.

T. JULIAN SKINNER, JR., Secretary
Junior Bar Conference of the
American Bar Association

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were invited to attend and to participate in discussing the subject of the discourse.

The Liaison Division of the State Department under the capable and friendly ministrations of Messrs. Dickey, Morin, Williams and Lancaster, kept all advised of meetings, arranged the details and frequently participated very effectively themselves.

The United States Delegation was gracious enough to indicate that the work and suggestions of its Consultants were helpful and had resulted in the adoption of some provisions adding strength to the Charter.

The representatives of the American Bar Association, speaking through the President, stated their position very clearly at the outset and adhered to it throughout.

Mr. Simmons explained the work done by the Association and the way in which its recommendations were formulated. He said that we were present at the invitation of the State Department, ready to present our views whenever called upon; that we did not propose to lobby for the adoption of our recommendations and that we would do all we could to secure the approval of the Charter as finally agreed to by the United Delegation and adopted by the Conference.

Our position was strictly limited by the published recommendations of the Association and the Statement of Principles and Joint Action by the Canadian Bar Association and the American Bar Association.

It is perhaps fair to say that a measure of success has attended our efforts although it is apparent now that we are to have a new court, called the International Court of Justice, without compulsory jurisdiction, that the voting process in the Security Council will follow the Yalta Formula and that we have not succeeded in liberalizing the provisions for amending the Charter.

Judge Ransom and Judge Hudson pursued a vigorous program in close cooperation with the Canadian representatives and with Judge Hudson sitting as an observer with Committee 1 of Commission IV and did everything they could to parallel the effort of the Consultant and his Associates, looking to the accomplishment of the same objectives in connection with the Court.

Now the long delay caused by disagreement among the delegations as to the voting formula for the Security Council and the so-called "veto" has come to an end and the question has been resolved as far as the Big Five are concerned.

Mr. Evatt of Australia, who has led the fight so far on the veto, promises more debate on the subject but it does not seem probable that the middle-sized and small nations will upset the agreement reached by the Big Five.

BOOKS FOR LAWYERS

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erty-loving peoples. His study of the anti-Nazi groups and their opposition to the Hitler ascendancy, largely at the cost of their lives, is factual. His account of the atmosphere in which "the masses succumbed to the rule of the militant and fanatical minority" is stern warning for the leaders of the independent institutions of public opinion under free governments everywhere.

NEW YORK LAWS AFFECTING BUSINESS CORPORATIONS. *New York: United States Corporation Company. May, 1945. $2.00. Pages xxxii, 602, with indices (paperbound.)*

This useful compilation of New York laws has made its annual appearance. (26th Edition). The statutory changes made by the legislative session recently adjourned were substantial, and comprise some 39 separate changes in the laws affecting corporations. Important among these were the repeal of the Additional Emergency Stock Transfer Tax and the establishment of a new rate commencing July 1; the enactment of nine amendments to the new Franchise Tax Act; and an entirely new Article of the General Corporation Law governing the reimbursement of directors, officers and employees of corporations for expenses in defending certain suits. Emergency measures were enacted or re-enacted with respect to contributions, service of notices, and the renegotiation of war contracts in computing franchise taxes. There are extensive annotations with judicial decisions; these notes contain not only the editor's understanding of the cases but usually are abstracts, in the Court's exact language, with citations of supporting cases. The "Synoptic Analysis" is a topical arrangement of the General and the Stock Corporation Laws and of the relationship of the several statutes.

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tion counsel of the District of Columbia, summarized the discussions and then resolutions respecting traffic court improvement were adopted.

The final session of the Council was held on June 12 with Chairman Rhyne presiding. Lyman M. Tondel, Jr. of New York, Chairman of the War Readjustment Committee, reported that much data and suggestions relative to aiding returning lawyer-veterans had been distributed nationally, and that many bar groups were now taking steps to definitely aid the veterans, such as arranging for refresher courses and free library facilities, and sponsoring legislation to provide free state codes and to exempt lawyer-veterans from license fees for a reasonable period. He stated that tangible results are now being definitely realized and that the committee's work is no longer in the theoretical stage. A discussion followed his report.

The secretary, acting as chairman of the Committee on Cooperation with Junior Bar Groups, presented that committee's report, and also presented his report as secretary.

Reports on the activities of the respective circuits were made by Charles W. Tobey, Jr., Concord (1st), Lyman M. Tondel, Jr., New York city (2nd), Leon Dreskin, Newark (3rd), Robert W. Gwin, Birmingham, Alabama (5th), Arthur M. Sebastian, Columbus (6th), William R. Eddleman, Seattle (9th), and J. Edward Bindeman, Washington, (District of Columbia). C. Keating Bowie, Jr., Baltimore (4th), Fred E. Inbau, Chicago (7th), John S. Howland, Des Moines (8th), and Charles A. Kothe, Tulsa (10th) could not attend, and brief reports concerning activities in their circuits were made by the Chairman.

Laymen Participate in District of Columbia Conference

An innovation in the usual program of conferences, held annually by United States circuit courts of appeals in their respective circuits, was introduced in the District of Columbia Conference held on May 18th, when Mr. B. M. McKelway, associate editor of the *Washington Evening Star,* addressed the conference from the layman's viewpoint on the subject, "Jury Service in the District of Columbia."

Mr. McKelway took as a starting point the impressions of five citizens who had recently served as jurors in the district court and who were interviewed upon their experiences.

From these case histories and from information supplied by the chairman of the Jury Commission, he developed the conclusion that there seems to be unnecessary delay and inconvenience to busy men called for jury service, that facilities for jurors are inadequate due to overcrowded court conditions, that some type of "orientation", either by pamphlet or by verbal instruction, is needed at the commencement of jury service, and that the jury lists from which jurors are selected are much too small and should be expanded so as to greatly decrease the frequency with which an individual is called to serve.

He applauded the participation of laymen in the councils of judges and court officials and said that it called for a display of tact and restraint on both sides. The intelligent layman, he said, will understand that some of the things which provoke his criticism are really the fruit of long experience in protecting his rights as a litigant, while many of the judges will realize that the machinery of justice has been handed down from one generation to another and suffers from the law of inertia.

The meeting was presided over by the Honorable D. Lawrence Groner, chief justice of the United States Court of Appeals for the District of Columbia.

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